

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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# DEBATES *R.P.S.*

OF THE

## Convention to Amend the Constitution.

### NINETIETH DAY.

THURSDAY, May 1, 1873.

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

Prayer by Rev. Jas. W. Curry.

The Journal of yesterday was read and approved.

#### PETITIONS AND MEMORIALS.

Mr. STANTON presented a memorial of citizens of Philadelphia, praying for the recognition of Almighty God and the christian religion in the Constitution, which was laid on the table.

Mr. G. W. PALMER presented two petitions of citizens of Luzerne county of like import, which were laid on the table.

Mr. BEEBE presented two petitions of citizens of Venango county of like import, which were ordered to lie on the table.

Mr. STEWART presented a memorial of like import from citizens of Franklin county, which was laid on the table.

Mr. CLARK presented the petition of one hundred and sixty-five citizens of Indiana county, another petition of twenty-three citizens of the same county, and another petition of fifty-one citizens of Westmoreland county, of like import, which were laid on the table.

#### INVITATION TO BEDFORD.

Mr. RUSSELL. Mr. President: I have a communication from citizens of Bedford which I ask to have read and laid on the table for the present.

The PRESIDENT. The communication will be read.

The CLERK read as follows:

*To the honorable the Constitutional Convention of Pennsylvania:*

The undersigned, appointed by a meeting of the citizens of Bedford a committee to invite your honorable body to hold your summer session at Bedford, respectfully represent that, at the aforesaid meeting of the citizens of Bedford, the following resolution was unanimously adopted:

*Resolved*, That the honorable the Constitutional Convention of Pennsylvania be and they are hereby respectfully invited to hold their summer session at Bedford, and that the audience room of the Evangelical Lutheran Church be tendered them as a place of meeting, the same having been placed at the disposal of this meeting for that purpose.

The undersigned take pleasure in presenting this invitation to your honorable body, and, in common with the people whom they represent, will be greatly gratified should the Convention see fit to accept it.

E. F. KERR,  
B. F. MEYERS,  
W. M. HALL,  
JOHN CESSNA,  
W. P. SCHELL,  
THOS. HAILLEY,  
F. BENEDICT,  
JOHN LUTZ,  
R. F. WILSON.

BEDFORD, PA., April 17, 1873.

Mr. RUSSELL. I move that the communication lie on the table for the present.

Mr. HOWARD. I move that the invitation be accepted.

Mr. MANN. I second the motion.

Mr. LILLY. I move, as an amendment, that it be laid on the table.

The PRESIDENT. That is not an amendment to the motion.

Mr. HUNSICKER. I move that it be indefinitely postponed.

Mr. HARRY WHITE. I hope that the consideration of this matter will be postponed for the present.

Mr. H. W. PALMER. That is right.

Mr. HARRY WHITE. I make that motion.

Mr. BARTHOLOMEW. I second it.

The PRESIDENT. It is moved and seconded that the further consideration of this subject be postponed for the present.

The motion was agreed to.

#### THE JUDICIAL SYSTEM.

Mr. DARLINGTON. I move 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 the committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. The question before the committee of the whole when it adjourned yesterday was the amendment of the gentleman from Allegheny (Mr. MacConnell) to the amendment of the gentleman from Philadelphia (Mr. Woodward) to the second section. The gentleman from Allegheny (Mr. Ewing) is entitled to the floor.

Mr. J. N. PURVIANCE rose.

The CHAIRMAN. The gentleman from Allegheny has the floor.

Mr. EWING. I will yield to the gentleman from Butler for the present.

Mr. J. N. PURVIANCE. Mr. Chairman: I shall confine my remarks as closely as I can to the question now before the committee, and I promise to ask their indulgence but for a short time.

The question, as I understand it, is on the motion of the gentleman from Allegheny, (Mr. MacConnell,) amendatory of the proposition of the gentleman from Philadelphia, (Judge Woodward,) and may be briefly stated: Shall the judges be elective or appointive?

Much has been said on both sides of the question, and well and ably said. I shall not pretend to answer all the arguments of the gentlemen who favor the appointive system, nor follow in the same line of thought with the gentlemen who favor the present system of an elective judiciary.

It is gravely asserted that the rights and liberty of the people are not safe under an elective judiciary, and that the people are not competent to make wise and judicious selections of judges; that bad and corrupt men will control nominations, and that judges will be chosen more from partisan sympathy than from considerations of the public good. But no facts or proof are brought forward to show that the appointive is the best system. It is true that the distinguished delegate from Philadelphia (Judge Woodward) asserts that the judges held their office by appointment for over one hundred and fifty years, from the organization of the government under William Penn down to the year 1851, and that since then, only a period of twenty-two years, they have held by elections; and he seems to assume that the people had a purer and better, a more able and profound judiciary under the appointive system than under the popular system now in force. How does he prove this? I have listened carefully to his arguments, and have been unable to discover anything in them which establishes the facts assumed by him. It is true he refers to cases where the people have not, in his judgment, made the best selection of judges. That may be so, but what does it prove? Rather an objection to our whole form of government than to any co-ordinate branch of it. The people, perhaps, do not always make the wisest choice of Presidents, Congressmen, Governors, legislators, &c.; yet the great and wise principles of our government, national or State, are not to be set aside on that account. And I would say, as a general rule, the people are the safest depository of power, though exceptions in practice may occur. The gentlemen argue rather from exceptional cases.

But if we recur to the history of our State for the last half century as to the administration of law in our courts of justice, and contrast the period of elective and appointive judiciary, we may find that the former has secured to the people an equal if not a better class of judges than the latter.

But it is said that the judges if appointed would be less partisan. This experience does not sustain. One of the leading causes of both the tenure and mode of selecting the judges was their exercise of an undue political influence in their districts, and the one-sided partisan character of the whole bench through-

out the entire State was the subject-matter of universal complaint. It is well known to many of the gentlemen of this Convention that for forty years no Whig or partisan of the Adams or Clay school of politics, however eminent and profound in legal learning, could hold a seat on the bench of any of the courts of this Commonwealth. If the whole bar of Philadelphia had asked the appointment of either John Sergeant or Horace Binney to a seat on the supreme bench, it would have been denied them. This was party discipline, party law, that no Governor dare violate and hope for a re-nomination and election. A case occurs to me now that I have a distinct memory of, that of your honored father, sir, the late lamented Judge White, and I may remark that I feel a delicacy in referring to him as you occupy the chair.

Judge White was a lawyer of extensive practice, a gentleman of accomplished education and fine social qualities, and possessed profound legal knowledge. Leaving a large practice in many of the western counties, he accepted the appointment, voluntarily tendered to him, of president judge of the district composed of the counties of Armstrong, Indiana, Jefferson and Westmorland, performing the duties with impartiality and a clear mind and sound judgment, for some ten years, to the entire satisfaction of the bar and community. At the expiration of his term the people of the district, by thousands, and the bar with almost entire unanimity, petitioned for his re-appointment. And yet such was the state of party discipline and party law that the Executive of our great State obeyed its mandate and appointed, or rather nominated to the Senate, another, fresh from the halls of the House of Representatives. I mention this fact and this case as one in entire accordance with the partisan feelings of these days, and the Governor's action as consistent with his fidelity to the principles of the party that elevated him to power. His private judgment and personal feelings might have led him to a different result, for no one possessed a more generous nature or kinder heart. With Judge White off the bench, if my memory serves me correctly, all the courts of the State were then presided over by judges holding one and the same political faith. It was this state of things that led to the constitutional provision for the election of judges.

I need scarcely refer to several judges

who received their commissions by appointment, that were so entirely incompetent that through the pressure of public sentiment, as well the bar as the people, they were compelled to resign. And I am sure I am justified in the remark that the Supreme Court is as ably constituted under the elective system as it was under the appointive. It is no disparagement to Gibson, and Rogers, and Bell, and Burnside, and Kennedy, and Coulter to compare them as only equals of Woodward, and Thompson, and Black, and Lowrie, and Agnew, and Read.

You cannot make judges less partisan by appointing them. The Governor is partisan, and necessarily must be so under our system of government. The judges appointed by him are of the same political faith, and the fountain cannot rise above its source. This is a principle recognized by both parties, with rare exceptions, since the organization of our government. And yet it is the pride and admiration of every citizen of Pennsylvania that our judiciary is as pure, as upright and able as the judiciary of any State of the Union, or of the world. No partisan, however warm his zeal and strong his prejudices, has ever carried them on the bench. The judicial ermine is pure and spotless and commands the entire confidence of the whole community. God grant it may ever be so. I will go as far as any other man in this Commonwealth to raise the judges above all partisan feeling in the discharge of their official duties; yes, to lift them out of party politics entirely. A right step in this direction is the elective system, for thereby you make them more independent.

You never can secure harmony between the co-ordinate branches of the government—the executive, legislative and judiciary—so well as to make each independent of the other. This cannot exist where one is created by the other. Equality can only exist where power and authority emanate equally from the same source.

My remarks so far have been confined to the question now more directly before the committee. Hereafter I may say something on the other sections of the article reported by the Judiciary Committee. I may now remark, in general terms, that in my judgment the people desire very few amendments to the present Constitution as to our judiciary system. I am much strengthened in this belief from the remarks of the distinguished

gentleman from Columbia (Mr. Buckalew:) "The present judicial system can be carried forward indefinitely under the present Constitution as well to ten millions of people as to half a million." He also cited the words of that eminent jurist, the late Judge Gibson: "Our judicial system is the best on the earth."

And the honorable chairman of the Judiciary Committee, in the course of his able speech, a few days ago, said he believed our judicial system is the best of any in the Union. With, then, some few changes, such as indicated in my remarks when last I addressed the committee, I would be satisfied with the present Constitution.

If it should be deemed advisable to establish a probate court, or to increase the number of judges on the supreme bench and courts of common pleas, the Legislature is clothed with ample power for these purposes, as well as to withdraw from the Supreme Court the consideration of bills in equity, writs of *mandamus*, *quo warranto*, &c. The Constitution, in the fifth article, section six, confers the power upon the Legislature to "vest in the said courts" (Supreme and courts of common pleas) "such other powers to grant relief in equity as shall be found necessary, and may, from time to time, enlarge or diminish these powers, or vest them in such other courts as they shall judge proper, for the due administration of justice." And the first section of the fifth article declares that the judicial power of this Commonwealth shall be vested in a Supreme Court, courts of oyer and terminer, courts of common pleas, &c., "and in such other courts as the Legislature may, from time to time, establish."

Here we have ample power to establish other courts, increase the number of judges and carry forward a grand system for the administration of law and justice, indefinitely, to millions of an increase of population.

The framers of our present Constitution evidently anticipated the growth and prosperity of our great State and the wants of the people, such as would be required by an increase in population, and all the great and varied industrial interests which development was then foreshadowing, and which is now progressing with a rapidity unequalled by any other State of the Union. Then our trade and commerce amounted to millions, now to billions; our population to one and a half millions, now to nearly four millions.

Mr. EWING. Mr. Chairman: Differing as I do, very greatly, from the conclusions of the majority of the Judiciary Committee, I wish to say here, in regard to their report, that in my opinion it is a most admirably drawn paper for the purposes for which it was intended. As a system it is very complete, and there is a unity about it that is admirable and is a credit to whoever drafted the report.

I do not, however, agree with my friend from Franklin, (Mr. Sharpe,) who was disposed to chide the committee of the whole for their rejection, in the early stages of the discussion, of this feature of an intermediate court. That is the fundamental part of the system proposed by the committee, and its rejection at the time that it was made by the committee of the whole was proper; it was the place to discuss it and to dispose of it.

The amendment offered by the learned gentleman from Philadelphia (Mr. Woodward) to the second section, in several of its provisions, meets my hearty approval. There has been a growing disposition of late years to invest the judges of our courts with duties that were extra-judicial, to take them away from the legitimate duties that devolve on persons occupying judicial position and make them legislative or executive officers. I am glad to see the introduction of a clause here that, in the future, will prevent anything of that sort. The gentleman from Philadelphia, in introducing his amendment, gave us substantial reasons for the change. I was only surprised, knowing, with his experience on the subject, that when taking away a part of this patronage that has been lodged in the courts, he undertook to put additional patronage in its place, which, to my mind, would be almost as dangerous. I allude to the provision that he makes that the judges shall appoint the clerks of their respective courts. The judges of the Supreme Court have had their share of this patronage that the gentleman who now offers this proposition objects to, and so far as my knowledge goes that patronage was distributed with an impartiality to the particular party friends of the judges that has nothing to surpass it in the dispensation of executive patronage or in any department of the government. It went to their friends, and to their party friends alone. I need refer to nothing more than the administration of the penitentiaries when they were under the control of the Supreme Court—through their appointees.

Again, the Supreme Court, as the law now stands, has the appointment of its own prothonotaries. Three of them, I believe, are appointed; four, perhaps. It is probably in the knowledge of every member of this Convention that when a vacancy occurs, when the term of one of those gentlemen expires, the members of the Supreme Court are harrassed with applications of persons wanting the place. They are applied to by the friends of candidates; they are button-holed in court and out of it; and I am surprised that the gentleman, with his experience in this matter, did not wish to get rid of that appointment.

Then, in addition to that, has the appointment of clerks by the Supreme Court prevented partisan appointments, or has it prevented improper conduct on the part of the incumbents of those offices? Who does not know that within a few years this State was flooded with fraudulent certificates of naturalization, issued from the office of the clerk of the Supreme Court, in this city; and yet —

Mr. WORRELL. I should like to say to the gentleman that he is entirely mistaken in his facts; that those certificates were a subject of judicial inquiry, and it was determined by the judges of the Supreme Court that those certificates were not issued from that office, were not issued by the prothonotary, but were gotten up outside, similarly, I suppose, to the false naturalization papers in 1856, where a seal was manufactured on purpose.

Mr. EWING. Well, I have to say that, of my own personal knowledge, I know that there were fraudulent certificates of naturalization issued and held by men in different parts of the State, with the seal of the Supreme Court attached.

Mr. TEMPLE. Will the gentleman allow me a minute?

Mr. EWING. Yes, sir.

Mr. TEMPLE. I desire to state to the gentleman that it has never been yet judicially ascertained that fraudulent naturalization papers were issued at all.

Mr. EWING. Well, I say that I know, of my own personal knowledge, that men held them who were not entitled to them, and in different parts of the State. I believe there are not twenty gentlemen in this Convention who do not know the fact, of their own personal knowledge.

Mr. WORRELL. I will say to the gentleman from Allegheny that a member of this Convention, Mr. Bidale, was counsel in that matter, and I should like

him to call upon Mr. Biddle to state what was the result of that judicial inquiry, for I do not understand the gentleman from Allegheny to assert that which was not proved, and which was not determined by this judicial investigation.

The CHAIRMAN. The gentleman from Allegheny (Mr. Ewing) has the floor.

Mr. LILLY. I should like to say —

Mr. EWING. I can only answer one question at a time.

Mr. LILLY. I do not want to ask the gentleman a question at all. I want to interpolate a small speech into his.

Mr. EWING. I hope the gentleman will wait till his time comes.

The CHAIRMAN. The gentleman from Allegheny has the floor and will not be interrupted.

Mr. LILLY. I only wish to say a few words at this time.

The CHAIRMAN. The Chair will remind gentlemen of the committee that there are only two kinds of interruption that are to be allowed; one is by way of explanation, and another is by way of interrogation, and that can only be done with the consent of the gentleman occupying the floor. The Chair will enforce the order hereafter.

Mr. EWING. I wish to finish what I have to say in my twenty minutes.

Mr. H. G. SMITH. I should like to ask the gentleman one question.

The CHAIRMAN. Does the gentleman from Allegheny allow himself to be interrupted by the gentleman from Lancaster?

Mr. EWING. Yes, sir.

Mr. H. G. SMITH. I merely wish to ask him whether he is or is not aware of the fact that, over the signature of Thomas Ashton, clerk of the quarter sessions of Philadelphia, and under a seal which was so palpably fraudulent on its face that it was not a seal at all, naturalization papers were issued and voted on in the Commonwealth of Pennsylvania last fall?

Mr. EWING. I am not aware of that. It may be so; but it is no answer to what I was suggesting. I am prepared to admit almost any charge against Philadelphia officials.

Mr. TEMPLE. I should like to ask the gentleman a question.

The CHAIRMAN. Does the gentleman allow himself again to be interrogated?

Mr. EWING. I think not.

The CHAIRMAN. The gentleman from Allegheny has the floor and will proceed.

Mr. EWING. Several gentlemen want to know what the question is.

The CHAIRMAN. No conversational interruption will be allowed.

Mr. TEMPLE. I merely wish to know whether the gentleman will permit a question to be asked.

Mr. EWING. Yes, sir.

Mr. TEMPLE. I desire to ask the gentleman whether he does not know that the blindest people in the world are those who can see but will not see.

Mr. EWING. I have heard of that. The gentleman knows that by experience, and we have a pretty good illustration of it just now, in my friend from Philadelphia, who wanted to interrogate me. I suppose that there are none of them who do not know that there were fraudulent certificates, which were issued from that court. I did not suppose any man in the Commonwealth doubted that. Now, understand me, I do not charge that the clerk of that Supreme Court, knowingly and wilfully, himself issued those certificates. It may be that it was mere negligence, though that, I think, in his office, amounted to very nearly the same thing.

But what I wished to call attention to, in my argument, was this: That when that case was investigated, and when, as I understand, there was at least a majority of the court who thought that the prothonotary had acted improperly, or very negligently, they had no power, under the law, to remove him. I do not think that the section which is offered by the gentleman from Philadelphia removes that difficulty. I should be willing to give the courts power over their clerks and over their other officers to remove them, even where they neglect their duty or are guilty of any misdemeanor; but I would not give them a patronage, such as the appointment of these clerks would put in their hands.

Let us see what it would be in the city of Philadelphia. There are, I understand, over thirty men employed under the different officers that would be appointive under this section, a patronage of \$50,000, \$60,000 or \$100,000 a year to be placed in the hands of the courts. I think that would be improper. I think it would subject the judges to improper solicitations. I trust that when the time comes the report of the Committee on County Officers will be adopted, limiting those officers to salaries. I hope some provision will be adopted giving the courts power to remove the clerks for any improper conduct, and also

some provision that will limit the salaries of these officers to a reasonable compensation, and not have it, as it is now in many places, where a man who in outside employment would be glad to get \$1,000, \$1,500 or \$2,000 a year, gets an office which will pay him three, four, five or ten times what the judge presiding in his court receives as salary. So much for that.

I come next to the question that is directly under discussion at the present time, namely, the manner in which the judges of our courts are to be selected. It is an important question, and one that I grant we should determine, not so much by regard to what popular clamor may ask us to adopt—not in a way that prejudice might ask us to determine it—but we should determine what we think, in the light of our experience and observation, and in the light of philosophy, if you please, is the best practical method of getting an honest, able, fearless, impartial judiciary in the State in all departments of the judiciary.

There have been various courses of argument here in objection to the plan of electing the judges of our courts. It is fair, I think, to those gentlemen, to say that the burden of proof is on them. We have now the elective system, and they are not entitled to change that system merely by showing that some evils may and do result from it; but they must show us the system of selecting our judges which will be free from the very evils which they object to in the elective system. Have they done it? If they have, I have failed to see how and where.

The very distinguished gentleman, Mr. Woodward, the author of the proposition now before us, who would have all the judges appointed by the Governor, gave us a very interesting history of what he called the appointment of judicial officers in all ages of the world, and he undertook to show us that the election of judges was a very recent innovation. He did not pretend, if I understood him aright, to say that, so far, it had been a failure. On the contrary, he admitted that it had given us as good a judiciary as we had had under the appointive system; but, according to his theory, it was wrong in philosophy, it was not supported by the history of the world, and, therefore, we should change it, although it had not worked evil, because it would work evil. If he should take the same history and the same sort of philosophy which he

gave us yesterday and carry it to its logical conclusion, he would not entrust to the people the election of any of their officers. He would find that authority in the State was held, in most cases, to come from above. It was the "divine right of kings" theory. The early history on which he bases his theory is the history of the Theocracy, and he undertakes to show that that was an appointive system of the judiciary. But my friend, the doctor, before me, (Mr. Horton,) who seems to be fully as well posted in the Bible as any other delegate on the floor, took up the Bible argument and seemed to me to have the advantage of my friend from Philadelphia, (Mr. Gowen,) who replied to him. My friend from Bradford is more familiar with the Bible, as my friend from Philadelphia is more familiar with the railroad question, and the gentleman from Bradford draws from the sacred book an argument in favor of an elective judiciary. I cannot decide between them. I am not a theologian. I do not intend to dwell longer on this point than to say that when the gentleman from Philadelphia (Mr. Woodward) gets such a Governor as Moses, *appointed in the same way* that Moses was appointed, then I will go with him for an appointive judiciary.

Again, the learned gentleman from Dauphin, (Mr. MacVeagh,) to whose eloquence we all listen with such admiration, had, as I understood him, but one theory or one argument. In this I may be mistaken, because his oratory so delights me that at the end of it I find sometimes that I have not paid proper attention to the argument which is always so strong underneath that magnificent oratory. But if I understood him aright, he is one of those gentlemen who are so profound that they care nothing for practical results. He would ignore all our experience of the past twenty-two or twenty-three years of a good elective judiciary, and would change our present system simply because it is wrong in theory to elect judges. He cares nothing for example—and he advances what seems to me to be rather a fanciful theory, that because judges of courts "are not political officers" they are not "representatives of government" whose duty it is to express the will of a constituency; therefore they should not be elective. His idea is that the office of judge is not a political office, that the judge should not have political patronage, that they should not have political feelings as should other

officers. I would like the gentleman from Dauphin, or any other gentleman, to tell me wherein the treasurer of a city, county or State is any more a representative officer than is a judge. What *political* duties has a treasurer to perform? What political duties has a sheriff of a county to perform? What political duties has a chief of police to perform? I am unable to see the distinction. I am unable to see why the people may not just as much be trusted to elect their judges as to have them selected by some power that has responsibility, as it is said. I am at a loss to see how and where and why the people, whose property and whose liberties are to be affected, are to be passed upon by the men that they select for these offices, have not a responsibility as great, and to my mind very much greater, than the man who happens for the time being to occupy the Governor's chair, and who would appoint these men. To my mind the theory utterly fails; and I wish to say here in regard to the argument of my learned friend on the right, (Mr. Gowen,) that if his argument is to go for anything in regard to the danger of trusting the people to elect judges, it is good as to any officers that they may elect. I am unable to see how, if the people of Philadelphia, if I may be allowed to refer to the special arguments of several gentlemen, elect corrupt men to the Legislature, to the Senate, and if they have a fraudulent election for Governor, if they are controlled by a clique of some twenty men, as I think was stated here, I should like to know why, if twenty men control the city of Philadelphia, elect the legislators from the city and elect the Governor, they would not control also the appointment of the judges by that Governor. I would like to know if a judge who, before his appointment, has to secure the influence of these twenty men, as under the argument of the gentleman from Philadelphia (Mr. Temple) would have to be done in order to get the appointment from the Governor, would he not feel just as much under obligation to them as he would under the elective system to the whole body of the people who now elect him.

But, say these gentlemen, "you elect politicians." No doubt that is an objection; but what is a politician? In one sense of the term, politicians should not be elected to such an office. If by the term "politician" you mean to exclude

men who have distinct opinions in regard to government affairs, men who have their party affiliations, men who believe and hold to certain interpretations of the Constitution, men who have certain distinct ideas in regard to the proper foundations and management of government; if you intend by the term politician to include these men and exclude them from being judges of the courts, then I ask leave to differ. A man who is fitted for a position of that sort, who has the proper education, and knowledge, and training, and the proper turn of mind, will have pretty distinct political ideas and convictions.

But granting all that has been said to be true, that politicians of bad character will occasionally creep into the judicial office under the elective system, whose fault is it? The fault of the people who have to suffer from it, the fault of the bar who ought, in every case, to control these elections; and if the bar of any district permit a candidate for judicial position to get down into the slums of politics, and go to "low places and consort with low politicians," and act as the gentleman from Philadelphia (Mr. Temple) said yesterday they have acted in Philadelphia, the bar of that district is certainly very gravely at fault, because a man, no difference what his character or his position may have been before, if he commits such acts as those I have just mentioned, is totally unfit for the position of judge. I grant all this; but is a man who will go into the petty intrigues that are often necessary, and that have been necessary and have been practiced to get position by appointment, any better fitted for it? Will you, any less, have politicians on the bench if they are appointed? What is the history of this country, as far back, at least, as any of us recollect? When I talk of examples I, of course, do not expect to affect those who are *so profoundly philosophical* as the gentleman from Dauphin, (Mr. MacVeagh,) and who "care nothing for examples;" and my friend here on the right (Mr. Gowen) is so young that he does not recollect anything about the appointment of the judiciary. I am a little older.

The CHAIRMAN. The Chair must remind the gentleman that his time has expired.

Mr. TEMPLE. I suggest that his time be extended, and I make that motion.

The motion was agreed to.

The CHAIRMAN. The gentleman from Allegheny will proceed.

Mr. EWING. I will endeavor to conclude in the time that was taken from me by interruptions.

My friend on my left (Mr. Temple) yesterday spoke of his impressions and his opinions having been greatly affected by his early training, by his instructor. No doubt we all get our opinions largely in that way. Well, among my earliest recollections of boyhood, in regard to the judiciary, was the appointment of a gentleman from New Hampshire to the supreme bench of the United States. He was one of the most bitter, uncompromising, unscrupulous partisans in the United States at the time of his appointment. He made a most excellent judge, however. But it impressed me very strongly at the time that an election would at least be no worse than an appointment.

Take the appointments on the supreme bench of the United States, and on the bench of the district courts throughout the United States, and so far as I know them, nine-tenths of them have been made for political reasons, and I might say for political reasons alone. And when you come to compare the local judiciary of this State with the appointments to the district courts of the United States in different places, I think the comparison is very favorable to the elective judiciary of this State. I believe the history of those appointments, from the earliest period of the government, is that political reasons have, to a great extent controlled; and I, for one, believe that the recent appointments in the United States courts are among the best that have been made within the past thirty years. When you have judges appointed, they will always be appointed from the political party of the Executive, so that I think we gain nothing there.

There is just one point more that I wish to suggest here, in which I am glad to find myself agreeing with my friend on my right (Mr. Gowen.) The learned gentleman from Philadelphia (Mr. Woodward) yesterday claimed the authorship in the Convention of 1837 of the proposition which limited the term of the judges, and thought that to that alone, or to that principally, was traceable the *improvement* which he admitted had taken place in the judiciary of the State within the past twenty or thirty years. I beg leave to differ with him. In my opinion that is the worst feature of the whole system. I believe that when you put a man on the bench, whether he be appointed or elected, he should never be subjected to the



temptation and test of having to look forward to a re-election, whether that time be for ten years or twenty years. The man who, when he first goes on the bench and is fit for it, is a man who usually has a good practice at the bar of his district, at least he should have; and while we have many judges who have not had this experience, yet as a rule I think it is the other way. It is a matter of entire indifference to him, financially, whether or not he have the position; but put him on the bench for ten or fifteen years; in that time he has lost his business; he has to a great extent lost his business capacity; and with very many of them, when it comes to the end of the term, it is a question of bread and butter, and it is a test to which no man ought to be subjected to endeavor to obtain either his reappointment or his re-election. I hope some gentleman will offer an amendment at the proper time which will change that feature of our judiciary system, and I shall vote for it very heartily.

Mr. CURRY. Mr. Chairman: I have listened with profound attention to the arguments offered by the gentlemen on both sides of the question now before us. I had not made up my mind until very recently in relation to how I should cast my vote, for the reason that I desired to gain all the information upon the subject, *pro* and *con*, that it was in my power to collect. I am forced to the conclusion that doctors and lawyers differ, and differ widely, upon the question now at issue. Many seem to be in favor of the supreme judges being appointed by the Governor. Others favor the idea of submitting their choice to a popular vote of the people. I recognize the fact that we are discussing one of the most important subjects that has been or will be brought before this Convention for its consideration. I look upon the judge that sits upon the bench as a man clothed with authority, and not the representative of any political party, and to a great extent holding within his judicial grasp the peace and dignity of the Commonwealth, and the liberties and property of the people. I look upon the Supreme Court as the last resort for Pennsylvania freemen; they should be composed of men of superior ability and unquestionable integrity; they should be kept entirely free from political bias and political influence. One step further and we look into the face of the Judge of all men—He that shall deal justly with the human race. The judges of our circuit

courts, and especially the judges of our Supreme Court, should recognize the responsibility assumed by them, and should be a transcript, as it were, from the Eternal Judge himself.

Now, Mr. Chairman, our desire being to keep the judges pure as they ought to be; that they should be as free as possible from everything pertaining to deception, political intrigue or anything that would be calculated to stain their pure reputations, bring reproach upon their position or bias their judgment in making a decision, always remembering the fact that politicians, as a mass, are the most corrupt and most treacherous of all men that now infest our government; the question is, shall we elect or shall we have our supreme judges appointed? As I have said, that is a matter about which lawyers differ. The arguments for and against seem to be about balanced.

If a convention of either party were called to nominate a candidate for supreme judge alone, there would be no danger that an unfit man would be nominated. Each party would strive to put forward, as a candidate, the most available man. Those most available for a position are sometimes defeated by the manipulations of political tricksters. Where common schools exist we might be able to select a competent person to fill the position; but it seems to me that the real danger exists in the fact that political conventions nominate the judges at the same time that they nominate other State officers. Then comes the familiar operation of all politicians—a trade between different localities. The east says to the west: "You nominate our man for judge, and we in turn will nominate your man for Auditor General;" and in the strife between candidates for other nominations, the nomination for judge becomes a matter of trade. Availability is lost sight of. This has not yet occurred; but it very nearly happened once, in the convention of 1857. A man totally unfit came within a few votes of being nominated in a bargain and sale.

There is no doubt, Mr. Chairman, that there are strong arguments that might be presented in favor of the elective system, and there are also strong arguments that can be presented on the other side, in favor of the appointment by the Governor. But when the question is asked, "which is best for the people?" I answer, in my humble judgment, let us first elect a high-toned, honorable man, as our Chief

Executive, direct from the people, and then trust him to select those men who shall preside over the judicial department of our Commonwealth. In that way we shall have judges, as near as possible, directly elected by the people, by electing a competent man to exercise the office of Governor and vesting in him the power of appointment.

But the question arises, will he not appoint men according to his own political inclinations? For example, will not a Republican Governor appoint Republican judges, and *vice versa*? Sir, I assert here to-day that it is a reflection upon the Chief Executive of our Commonwealth to make such an insinuation; and I am glad that we can refer to one case, particularly, in which a Democratic Governor appointed a Republican judge in the city of Philadelphia. I refer to Governor Shunk. If he, in his judgment, thought that was best, I ask may we not trust other Governors that may succeed the present one to do the same thing?

For my part, Mr. Chairman, in representing a people who act and think for themselves, and in connection with the majority of my colleagues, I shall vote in favor of vesting the power of appointment of our supreme judges in the Governor.

MR. WORRELL. Mr. Chairman: I rise to advocate the elective system. The proposed change in our organic law is not demanded by an existing necessity. The arguments in favor of an appointed judiciary are not supported by facts and experience. They rest upon speculative theories of possible evil, which, under our present Constitution, may arise in the remote future. The elective principle has been triumphantly vindicated by the circumstance that the distinguished gentlemen who have opposed it have been unable, even upon challenge, to point to the mischief which this new provision is to remedy.

Where is the judge who has rewarded political friends, and oppressed political opponents? Where is the judge who has allowed a suitor's party predilections to obtain him an advantage in the temple of justice? Where is the judge who has swerved under public clamor to gain the prize of popular admiration? Where is the judge who has consorted in pot-houses with party tricksters, and trailed his crine in partisan mire, to secure a re-nomination for his judicial office?

These are the calamities which the gentlemen have deplored. Where do they exist? Where is the testimony that these depravities do and will attend an elective judiciary? Let the man stand forth who impeaches, aye, suspects the integrity and impartiality of our judges.

Mr. Chairman, who demands this alteration? Who head this revolution? Those whose servants we are, and whose delegated powers we are exercising? No! The gentlemen press this amendment in the interests of the people, to preserve their liberties and to protect their property against unjust judges. Have the people expressed any sense of insecurity? Has an alarm been sounded? Was this alteration of the fundamental law contemplated when this Convention was authorized?

Point me to the one line or the one word of evidence. And I would remind gentlemen that it would be well to consider the temper and wishes of the people. We are here to propose amendments to the PEOPLE'S Constitution. "We, the people of the Commonwealth of Pennsylvania, ordain and establish this Constitution for its government," are the words of the preamble. Mr. Chairman, the people are tenacious of this elective principle, and will not surrender it except for subsisting momentous reasons.

I was struck with the subtle argument of the gentleman from Dauphin, that the judiciary were not representative officers, and were not, therefore, upon any correct governmental theory, to be elected by the people; that the Governor and legislators were the representatives of party, and would, with reason and propriety, administer their offices as their party might dictate. But the gentleman did not sufficiently refine his doctrines. To no purpose has he read from Aristotle to Stuart Mill. I would suggest to him that his argument would apply with equal force to an appointive Executive and Legislature, for the functions of those departments are as distinctly defined as are those of the judiciary and should be as conscientiously and equitably exercised. That gentleman fails in his conception of public morality who believes that a solemn oath to "support the Constitution of this Commonwealth and to perform the duties of an office with fidelity," will permit party interests to over-ride a faithful performance of official duties. That is the oath of office of the Executive, that the oath of office of the judge. The gentleman from Dauphin

would repel the insinuation that the oath he took, as a member of this Convention, could be reconciled in his conscience with an unfaithful performance of his duties, even though grave party considerations demanded recalcancy to his sworn trust.

I have been thus elaborate on this point to demonstrate that there can be no fair deduction in favor of an appointive judiciary and against an appointive Executive, drawn either from the duties of each officer or the manner in which those duties should be performed.

And the sentiment which would make an Executive the Executive of a party, and not the sworn officer of the Constitution, would unfit him for the selection of judges. The people will make no concession to such a notion as that. I fear, however, Mr. Chairman, that public judgment has been affected, and that false teachers have taught too generally that the Chief Executive of a great Commonwealth should respond to the party lash. But for that reason I shall oppose vesting in that officer the appointment of the members of a *co-ordinate branch of government*. The time will come when pledges of judicial appointments will help to secure gubernatorial nominations. The judgeship will become part of the Executive patronage, and we will witness, in the judicial department of our government, what we see in other high places—men filling exalted governmental stations who would not dare submit their title to office to a popular vote, men whom the *people* would consign to the lowest depths of political oblivion. I do not fear so greatly the pressure upon an Executive succeeding his election, but I do most seriously apprehend the bargains and pledges and promises to secure a nomination and election. We have been referred to the judicial system of the United States for the vindication of the doctrine of appointment.

Do not gentlemen know that the number of the judges of the Supreme Court of the United States has been decreased and then increased to serve party ends? Was not the whole system of the United States circuit courts reconstructed for party purposes? Has not an United States judge brazenly asserted that, by packing the jury, he could secure the conviction of a defendant in his court? Did not an United States judge in New York, after over-ruling a demurrer filed merely to raise a constitutional question, refuse an humble defendant the right—I say right

advisedly, for unbroken practice had sanctified this custom into a right—of pleading over, and was not this to benefit his party? Has the Convention heard of United States Judge Sherman, who would have been impeached and removed from office but for the party standing of a relative? And is there not an United States Judge Darell who, to aid his party, usurped functions that no man claims he possessed, almost precipitating civil convulsions? Are there not United States judges whose derelictions were so great that even now they are under impeachment for high crimes and misdemeanors in their offices? And all this under a system of appointment for life.

Mr. Chairman, the people have always felt their responsibility in the selection of judges, and have, with rare exceptions, discriminated in the selection of these officers. The instances are few in which they refused to re-elect a judge who gave a good account of his stewardship. No political party would dare present a notoriously incompetent candidate. The people have demanded and will demand the nomination of men of unspotted private and professional reputation. The people are well advised of the value of an upright judiciary, and they will see that our judges are kept out of the slums of partisan trickery.

And I assert that a judge has a greater probability of being re-elected in a community in which he has ably and impartially administered his office than he has of being re-appointed by an Executive who has party favorites to reward, and combinations to make to secure higher political honors.

I desire now, Mr. Chairman, to say a few words in reply to an unmanly assault made yesterday upon an eminent and respected judge of this city, a gentleman to whose vote I am, in part, indebted for my seat in this Convention.

Mr. TEMPLE. I desire to ask the gentleman from Philadelphia a question.

The CHAIRMAN. Will the gentleman on the floor allow himself to be interrogated?

Mr. WORRELL. I will not, sir.

The CHAIRMAN. The gentleman from Philadelphia will proceed.

Mr. WORRELL. I refer to Hon. James R. Ludlow.

Mr. TEMPLE. I will ask the gentleman—

The CHAIRMAN. The gentleman from Philadelphia (Mr. Temple) will take his

seat. The gentleman on the floor declines to be interrupted.

MR. WORRELL. I will not characterize the remarks of the delegate from the Third district as I feel truth would justify, for I should exceed the limits and propriety of debate; but I will say to the delegate that when he applies to Judge Ludlow the expression that he was "selected primarily by about twenty politicians," he utters that which is not true in point of fact. He was selected primarily by his exemplary private life and his distinguished and upright official career. The people demanded that he should continue to fill a judicial station which he had adorned and dignified by his ability, integrity and urbanity. The legal profession, without regard to party, united in a tribute to his worth and a request that he would submit himself for re-election. Merchants, manufacturers and business men of all classes and all parties joined in a written appeal to the people to aid in his re-election. Could twenty politicians create such sentiment? Could twenty thousand resist it?

If the professional duties of the delegate had called him more frequently into court, or had he been thrown into contact with lawyers in active practice, he would have found that the professional estimation of Judge Ludlow's judicial course would not have warranted the attack he made upon him.

The delegate flaunted and waved his banner with this strange device: "Let judicial execration come for what I say." "I do not fear judicial execration." This, Mr. Chairman, has a moral, for which I will refer him to *Æsop in Rhyme*; Henderson's edition of 1852, page 101.

MR. H. G. SMITH. In the few words I shall say on this question I will endeavor to confine myself to a practical view of it, because, after all, it reduces itself to a very practical question. The question is simply, are the people fit to be trusted with the election of those who shall administer the laws of the State? We trust them to elect those who execute the laws, the highest officers of the Commonwealth and of the nation. We trust them to elect those who make the laws. We have heard no argument in this Convention in favor of limiting the right of the people in these respects. The office of the judge is a ministerial office. We trust the people of this State in the election of other ministerial officers; and within a very few years past, nay, pending at the pres-

ent time, is a proposition to take from the Legislature of this State the power of appointing a State Treasurer and to give it to the people. Why was this done? Because, sir, it has been proved by the experience of the past that the Legislature of your Commonwealth was not the best repository of such power, and if greater proof of its unfitness for the exercise of such power were needed, it can be found in the fact that at the last session of the Legislature the intent and purpose of the constitutional provision, solemnly passed upon by the people of this Commonwealth, was evaded in order to keep longer in office the present State Treasurer.

Now, sir, there are those who totally deny that the people are fit depositories of such power as we entrust to them. Mr. Carlyle has portrayed the evils of our system with his sardonic humor. He has told us that to entrust the election of the Executive officer to the voice of a mob is not the way to secure the selection of the *canning* or kingman; and the American citizen who reads his utterances thoughtfully will see that in the midst of his sombre sentences there lurks a modicum of truth which we may well take to heart.

We trust the people in this country not only implicitly, but we have been, from year to year, extending our confidence in them. We have made suffrage as broad as manhood itself, and we have had petitions to this Convention and arguments upon this floor in favor of its extension to the female sex also. We have not shown by our practice that our theory of government leads us to a distrust of the people, but, on the contrary, we have continually evinced the greatest possible confidence in them. I confess, sir, that I have sometimes thought we were going entirely too far in that direction; and whatever opposition I made to the admission of colored men to the right of suffrage, I made believing honestly that the argument against it lay not in color or in race, but in the fact that many of them would be found unfit to exercise intelligently the right of suffrage.

If we are to limit the power of the people in elections, let us not begin at the wrong end. If we give the right of universal suffrage and propose to continue it; if, after having once granted it, we cannot take it away, how far can we safely go in taking away from the people the right to elect their officers? They are to be the judges of the work of this Convention in

the end ; it is their power and their voice and their will that must control whatever this Convention does and whatever else is done by the government in all its various departments, both State and national.

Now, sir, with regard to the practical operation of the appointment or election of judges, let us see how it now stands in this Commonwealth. I put it to every member of this Convention whether a majority of the members of the bar of the predominant political party, and the best men at the bar, do not dictate the nomination of judges? In what county or district of the Commonwealth is it otherwise? To what county or district in this Commonwealth can you go in which the voice of a majority of the members of the bar, of the dominant and minority parties, do not dictate the nominations for judges? That is practically applying the very test upon which the gentleman from Philadelphia, (Mr. Gowen,) and the distinguished gentleman from York, (Mr. J. S. Black,) agreed yesterday as the best possible manner of selecting judges.

We are told here that to allow judges to be elected is to drag them down into the political arena. Time and again in this Commonwealth, when improper nominations were made for judges, the people have risen superior to party. It was so some ten years ago in the great Republican stronghold of Lancaster, where the regular nominee of the Republican party was defeated, and a man who was not in affiliation with that organization elected to the office of president judge, an office from which he has just retired, bearing with him the commendations of all his fellow-citizens. It has been done more lately in the Crawford district, where Judge Lowrie, who had adorned the supreme bench, was chosen to the office of president judge. It was done last year in Schuylkill county, where, for what reasons I know not, nor do I care to inquire, the regular nomination failed to satisfy a majority of the voters, and a distinguished gentleman, who was once the candidate of the Democratic party of this Commonwealth for supreme judge, living in the county of Cambria, was elected, and is to-day the president judge of the Schuylkill district.

It is not true that the judiciary of this Commonwealth have been degraded, or that they have been trammelled by political considerations in consequence of being elected by the people. What would be the effect if you adopted the other plan?

Who would dictate the nominations to the Governor of the Commonwealth? Would the judges be, as they generally are now, the choice of the members of the bar of the district in which the appointments are to be made? That would simply depend upon the influence of members of the bar with the Executive. Their influence can now be exercised at home, in their own district, properly, promptly and decidedly; but the probabilities are that when they should undertake to bring their influence to bear upon the Executive of the Commonwealth, they would find at work mere political influences, stronger than any they could possibly command. If the people are not fit to be trusted with the election of their judges, can they be trusted to elect one man to whom the immense power of appointing all the judges of this Commonwealth is to be committed? The people may now and then neglect their interests; political influences may now and then prevail over other and more proper considerations; but with the distribution of this power and the ability to apply it properly in each of the districts of the Commonwealth, we shall be, in my judgment, in a far better condition than we should be if we entrusted the appointment of all our judiciary officers to the Executive.

But there is another consideration to which I desire to call attention. We have heard, upon this floor, many allusions to the menacing attitude of corporate power, of its disposition and ability to encroach upon the rights and liberties of the people. Too true is it that this power has advanced upon us with gigantic strides; too true is it that great corporations do not confine themselves to their legitimate business; too true are the allegations, that they have stalked into your legislative halls and dictated the making of your laws. Witness the calamity act, in which, and by means of which, at the dictation of a great railroad corporation, the Legislature of this Commonwealth set a price upon the limbs and life of every citizen; and the Governor of this Commonwealth, against the protest of a well informed and united press, sanctioned that law. If this can be done, if such laws can be passed in your Legislature at the dictation of corporations, and if your Governors can be induced to sign them against the protest of a united press, are they, the Executive and the Legislature, the best repositories of the power which, under the pending

proposition, you would commit to their hands—the appointment of the men who are to administer the laws throughout the length and breadth of this Commonwealth?

But corporate power has not stopped at the dictation of laws. It is also true that its potency has been shown in the appointment and election of officers in this State. I grieve to say it, but it is a matter of history, and not to be gainsaid, that in the Senate of the United States, this day, sits, as a representative of Pennsylvania, a man who would never have held that position but for the influence of one gigantic corporation. The history of that election attests the truth of what I utter, and the memory of many members now upon this floor will bear out the assertion. If this be true, are we not likely to rush into greater dangers in the attempt to escape from imaginary evils?

We have been told by gentlemen that requiring two-thirds of the Senate to confirm a nomination will ensure a proper result, and that under the operation of this numerical restriction improper men could not be confirmed. Is it necessary to remind gentlemen that when such complications arise a solution for them is inevitably found. When Andrew Johnson became what his enemies were pleased to term the "accidental" President of the United States, no great difficulty was encountered in arranging both the appointment and the confirmation of candidates for the offices within his gift. Division of the spoils made the whole matter easy. Therefore the argument that confirmation as a pre-requisite to the conferring of judicial authority will secure an impartial and capable judiciary, when weighed in the balance of past experience, is found wanting.

But the people have not asked for this change in our existing judicial system. I am not aware, so far as my knowledge of this State is concerned,—and I constantly read the utterances of the press of every county within our borders—that the people of Pennsylvania have at all complained of the manner of electing their judges. I have seen no serious accusations against judges elected by the people. There has been no general, wide-spread murmuring, nor have the advocates of the appointive system pointed out any evils which, arising in the past under the elective plan, would require that plan to be changed for the future. It is true that some of our ablest and best men have been rejected by

the people, but it is no less true that they would have been rejected by the Executive had the power of appointment been lodged in his hands. It is true, as we have been told here, that the distinguished gentleman from Philadelphia (Mr. Woodward) who has so ably argued in favor of the amendment now under discussion, was defeated by the people of the county of Luzerne, when he consented to be a candidate for the office of president judge, but to that there is a very easy answer. The really able gentleman who was elected to succeed him would have received the appointment over the head of the distinguished ex-chief justice, from any Governor who has filled the executive chair of this State within the past twelve years. Nobody can doubt that. There is an obligation which men of all political parties recognize in this country that inevitably secures the bestowal of positions of honor or profit upon men whose political faith is in accord with the convictions of those in power. This is an evil, but it is one we cannot remedy, and the doctrine everywhere recognized and practiced is that "to the victors belong the spoils."

MR. STEWART. Will the gentleman from Lancaster allow me to ask him a question?

MR. H. G. SMITH. Certainly.

MR. STEWART. Has not the gentleman been reminded of the abuses which have existed in a neighboring State, under the elective system?

MR. H. G. SMITH. In the State of New York?

MR. STEWART. Yes, sir.

MR. H. G. SMITH. I will answer that in one minute. Before I do so, I desire to allude to another precedent which has been cited here. Certainly, in that celebrated case, tried more than eighteen hundred years ago, the facts ought to be a sufficient answer to any argument that can be drawn from precedents in favor of the appointive system. The notorious Jewish judge who decided upon the accusations brought against Jesus Christ, has been referred to us as an illustration of the danger that may be incurred by continuing the power of electing judges in the hands of our people. Was that man a judge, elected by the people? No, sir! He was a specimen of what you can expect from the appointive power. Pontius Pilate held his commission by appointment from the Roman emperor, and when this case was brought before him he confessed that he knew not

the law, and persistently insisted that he could find no fault in the accused. Still, in spite of his honest convictions, he yielded up the Great Expounder of the Moral Law to the demand of an excited populace. The appointive system can not be said to have worked well in that case, and I am surprised that it should have been cited by the able gentleman from Philadelphia, (Mr. Gowen,) as a precedent in its favor.

In conclusion, I will reply to the question of the gentleman from Franklin, (Mr. Stewart,) who asks me whether the elective system has not worked badly in the State of New York. In answering him it is only necessary to say that whether in the election of judges, the election of the Executive, or the election of representative officers; whether there are to be elected the men who make the law, the men who interpret the law, or the men who execute the law, our only reliance is upon the ability and the integrity of the people. Of the judges in the rural districts in the State of New York, in the great body of that State, no complaint has been made. That in the great city of New York improper influences were brought to bear to corrupt and taint the men who there occupied judicial positions, and who ought never to have occupied them, none will deny. But the temptations applied to these men were of a singular character and potency. It may be that men appointed by the Executive would never have yielded to the pressure of such temptation, but that cannot be confidently asserted, because very few men were ever subjected to such a test. With the millions of powerful corporations ready to be shared with the judges of that city, in order to secure injunctions in railroad controversies, it is not very surprising that some of them fell. But their fall is not to be attributed to the fact that they were judges chosen under an elective system, for who can say that if the judges of that State had been appointed by the Governor and confirmed by the superior branch of the Legislature, they would not have dragged the judicial ermine into disgrace, as some of those who were elected did. Nay, it is suggested by a gentleman near me (ex-Governor Bigler) that the great representative of the corruption of New York city in the Senate of that State, Mr. Tweed, if the appointive system had prevailed, would, when nominations came into the Senate from the Governor, have caused the re-

jection of every honest man presented for confirmation and have secured the nomination and confirmation of improper judges. I believe that would have been the case in New York, and I believe that such a policy may eventually be found to prevail in other States.

If the people cannot be trusted with the elections of their judges can they be trusted with the more important matters that are now committed to their charge? If it be true, as gentlemen have said upon this floor, that the elements of our political life are so corrupt that we must snatch from the people piece-meal the power which rightfully belongs to them; if this be true, then indeed is this government rushing down the rapids into the very vortex of that political Niagara which was so graphically described by Mr. Carlyle, in a letter published a year or two ago. That remarkable paper caused only a smile at that time, but if the declarations of gentlemen upon this floor, that the people of this Commonwealth are no longer worthy to be entrusted with the election of their judges, be true, then must it be equally true that they are no longer worthy to be entrusted with the election of any officer; and then indeed are we rapidly nearing the whirlpool of destruction into which may be speedily precipitated not only the government of this State, but that of all the other States, and of the nation.

Mr. BOWMAN. Mr. Chairman: I have not, this morning, any desire to occupy much of the time of this committee of the whole in the further discussion of this question. If the committee will give me their attention for a few moments, I will promise to be brief, and very brief, in what I deem it my duty to say.

In 1837 and 1838 the Constitutional Convention changed the organic law of the State so far as the election of justices of the peace was concerned, and in 1840, under that Constitution, a judicial officer of the State was first elected. Again, in 1851, the Constitution was changed, so as to provide for the election of every judicial officer in the State. That provision of the Constitution has been in practical operation, before the people of the Commonwealth, for twenty-two years. During that time all our judges have been elected, and they have been clearly the equals in intelligence, ability and probity, of those who adorned our judicial system under the former manner of deriving appointments from the Governor.

Even looking at this question from a political standpoint, we find that they have been about equally divided between the two great political parties, with a slight preponderance in favor of the Democratic party.

What is now proposed? Why, to wrest this power from the hands of the people, where, in my judgment, it properly belongs. Can this be done? I think not. In what civilized country, in what age of the world, have the people ever voluntarily surrendered any power with which they have once become invested? No such instance can be found. It is hardly possible that the people of this Commonwealth will ever consent that one department of the State government shall be administered by men whom they have had no voice in selecting. Sir, the people will cling to this power as the mariner clings to the last plank when the tempest and the waves close around him. In my judgment, they have a desire to retain this power, which is as strong as that which bound Ruth to Naomi. Should we adopt this retrograde movement, by providing for the appointment of the judiciary, as proposed in this amendment, it would be a virtual admission that man's capacity for self-government is a failure. If the people are prepared to surrender this power, as was said by the honorable gentleman from Philadelphia, (Mr. Woodward,) without a struggle, then the idea, so prevalent, that this is "a government of the people, by the people, and for the people," conveys an abominable falsehood.

The gentleman from Philadelphia (Mr. Woodward) proposes to take from the people of this Commonwealth the power, right and privilege conferred upon them twenty-two years ago, and for what reason? Have the people been guilty of acts of usurpation in the exercise of this right? Have they in any manner misused the trust committed to their care? Who charges the people with sins of omission or commission in the exercise of this most inestimable privilege by which they have forfeited their rights to its future exercise? Why, sir, in the exercise of this elective franchise by the people, the gentleman was himself elevated to the highest judicial position in the Commonwealth. And now sir, after a full and complete enjoyment of the people's bounty, bestowed with trust and confidence, after becoming the recipient of the emoluments and honors incident to the position to which he had been so elevated, he proposes to take

from the people this power which has been so long exercised by them. I incline to the opinion that the electors will call this ingratitude.

Mr. Chairman, I would keep the different departments of our State government as independent of each other as possible. But if the judges of all our courts of record are to be appointed by the Governor, by and with the advice and consent of the Senate, or two-thirds of all the members of the Senate, then I submit that one branch of our State government, to wit, the judiciary, will depend entirely upon the Executive and two-thirds of one branch of the legislative department for its existence. I think this would be conferring too much upon the Executive and one branch of the legislature. Take the Senate as now constituted, and twenty-three men, with but little responsibility to anybody, can fill every judicial bench in the Commonwealth.

We have already provided that future Governors shall not exercise the pardoning power as heretofore. It has been thought wise to associate with him four other officials in the exercise of that power. We have also taken from him the power to appoint, as heretofore, the superintendent of common schools; and it cannot be forgotten by the committee that there was a powerful effort made on this floor, pending the consideration of the report of the Committee on the Executive Department, to take from the Governor the right and power to appoint the Attorney General of the Commonwealth. And as an exhibition of our lack of confidence in the honesty and integrity of mankind in general, and of future Governors of Pennsylvania in particular, we have also provided that hereafter no Governor shall be re-elected until after he shall have taken a back seat for a period of four years from the expiration of his term of office. Yet, sir, after limiting the powers of the Governor in these minor details, it is now seriously proposed to permit him to name every person for official position in one of the entire departments of our State government.

Mr. Chairman, how does it happen that the gentleman from Philadelphia (Mr. Temple) has so suddenly discovered the immaculate purity and integrity of the Pennsylvania Legislature, that he is now willing to trust one branch of that body with such a vital question and grave responsibility as is contained in this propo-



sition? Why, sir, from the day this Convention convened at Harrisburg to this hour, on all occasions, "in season and out of season," has that gentleman showered upon the devoted heads of the members of the Legislature his withering invective. The members of this Convention have at times mingled in the deep emotion created by the power of his eloquence. They have frequently become agitated, warmed, thrilled, electrified, melted and quite ready to yield to the luxury of tears. We have all heard him; we have seen his eye flash indignation, like the lightnings of Heaven that scathe and consume every object they approach; we have seen his form dilate as he lifted himself into a strain of eloquence. Nay, woe to the man who has ever held a seat in the Legislature of this Commonwealth. How frequently has the gentleman gathered up the energies of his mighty soul, and poured forth a stream of crystallized execration upon the heads of that body, declaring them unfit to pass a law authorizing the building of a street passenger railroad, and too dishonest to be trusted with the most insignificant local legislation. And yet, sir, that gentleman told us at great length yesterday that the power to confirm the nominations for the judiciary made by the Governor could be safely confided to two-thirds of one branch of that corrupt and most infamous body, as he had so frequently called it; and that it would be unsafe longer to allow the people to elect the officers of one of the departments of their State government, and the one, too, in which they have the greatest interest. For, sir, the liberty of the people is not that liberty merely which is defined in written Constitutions, nor is it that liberty which is enforced by legislative enactment; but little as our people think of it—and would to Heaven that they would think of it a hundred times more intensely than they do—the only liberty we have now or ever have had, so far as the individual citizen is concerned, is that liberty which is enforced and secured in the judicial tribunals of the country. We may talk about our social equality as much as we please; we may talk about all being free and equal; it is all an idle song, a worthless tale; it is a vain and empty expression unless that liberty, that equality, and the right to acquire and possess property, are enforced in a court of justice. It is there, and nowhere else, that the millionaire and the beggar meet upon equal terms

and upon common ground. It is there you can see the impartial judge sitting, blind to all external emotions and impressions, to declare the law and try the cause and administer justice to the poor, ignorant, unfortunate man, it may be, against the wealthiest and most powerful of the land.

Incompetent and corrupt judges may have been elected, and that such have been appointed there is no doubt. Bacon, in the intellectual horizon, is a star of the first magnitude. He possessed an intellectual power which has gained conquests over the world more splendid and magnificent than those of Alexander. It has been justly said of him, that "amidst all his intellectual wealth and splendor, a reach of intellect rarely surpassed and which distanced all that antiquity had done before him, and shaped the judgment, the reason and the philosophy of all coming time, there was an awful defect in his education which sent him, notwithstanding his great powers, a heart-broken, drivelling and despised old man to his grave." There was that in him which more than justified Pope's antithesis, "the greatest, wisest, meanest of mankind." Before this committee I need not go into a delineation of the character of the great jurist, or tell how he amassed a fortune of a hundred thousand pounds by arts and cunning that would have disgraced the veriest pettifogger that ever lied before a jury, or white-washed guilt with a tongue as foul as corruption itself. I need not tell you that the illustrious Chancellor of the realm, whose justice should have been as irreproachable and free from stain as the ermine on his robe, accepted large presents from persons engaged in chancery suits; that he sold his decisions for gold; that he basely deserted the friend through whose influence he rose to power; that he became his bitterest enemy, and by the charms of his irresistible eloquence and pen foreclosed every ray of hope to the unfortunate Essex, and in his death damned his own reputation, consigning all that man holds as high and dear in principle, to an abyss blacker than midnight. The crowning excellence of a perfect character this great jurist lacked. This made him vulnerable. With an intellect far-reaching, lofty-looking, and deep-searching; a memory freighted with the lore of all time; a fancy laden with everything glittering in the rainbow of genius; a judgment matured, and intellectual powers expanded

into giant proportions, he was a slave to the vices of his own heart, and fell an easy victim to his own depravity.

Mr. Chairman, no man is lost or becomes depraved until his virtue is gone. Paris was not undone when the Greeks captured Troy; but his true undoing was when he lost modesty, faith, honor, virtue. Achilles, too, was only undone when he gave himself up to rage, when he wept over a girl; when he forgot that he came to Troy not to win mistresses, but to fight battles. The true defeat is not when cities are taken nor when battles are lost, but when right principles are cast aside and trodden under foot.

Mr. Chairman, in conclusion, allow me to say that should we take from the people the right to elect their judges, in my opinion they, instead of ratifying the Constitution presented for their approval, will on election day celebrate its obsequies and write its epitaph, and that epitaph will be: "Died in the attempt to rob the people of their rights."

Mr. BROOMALL. Mr. Chairman: I do not intend to take up the time of the Convention by debating this question; I simply desire to define my own position. I appreciate the importance of an independent judiciary as much as any man present; but I cannot see that the independence of the judiciary is involved in the question under discussion now.

If the judiciary be elected or appointed for a mere term, they will necessarily be dependent, to some extent, upon the power that can renew the term, so that the length of the term is the question that covers the dependence or independence of the judiciary. It was with this view that, early in the sessions of this body, I introduced a resolution, found on page eighty-nine of the Debates, which I will read:

"That the Committee on the Judiciary be instructed to inquire into the expediency of providing that all judges who are required to be learned in the law shall be appointed by the Governor, by and with the advice and consent of the Senate, and that they shall hold their offices during good behavior; and of providing a method of retiring them on account of age or infirmity."

I maintain that opinion still. I think that is what should be done. But I find that I stand alone upon the only element contained in that resolution which I care much about, and that is their term of office—their holding their offices during

good behavior. When it comes back to the question of their holding them for a term, when I am forced to sacrifice the matter of independence, then I must choose between merely the two modes of selection, and when that comes, I have no hesitation in saying that I prefer that the judges should be dependent upon the people of their district for the renewal of their term of office rather than upon the wire-pullers at the seat of government. If they must be dependent, (and it seems they must be, for neither this body nor the people will make them independent by making their terms during good behavior,) let the dependence be at home; let the dependence be upon those whom they serve rather than upon those who are not interested in having good officers at all, but are only interested in assigning political favors here and there.

I, therefore, shall vote upon this question for the election of the judges until I see some chance to fix their terms of office so as to make them entirely independent.

Mr. H. W. PALMER. Mr. Chairman: I am opposed to an appointive judiciary because, in my judgment, it is no adequate remedy for the evils that pertain to the elective system. The chief count in the indictment against an elective judiciary is that politicians seek places upon the bench and that justice goes by favor and not according to law.

I agree with all the severe and eloquent denunciations which have been launched at partisan, prejudiced and dependent judges; but I fail to discover how the plan proposed will remedy the evils suggested. The people must elect the Executive, and if he be a pure, just and good man, he will not knowingly appoint unjust or unfit judges. If he is a bad, weak and corrupt man, then no consideration of self-respect and no consideration of public policy would prevent him from using his patronage for his own personal advantage or to reward his personal or party friends. If the people have wisdom and virtue enough to elect an honest Governor, why have they not enough to elect honest judges.

We have been told that our present system is on trial and that it is in process of condemnation. Very likely it is on trial; there is no department of the government that is not on trial. Whether it is in process of condemnation or not can be better told when the jury comes in; and if the jury brings in an adverse verdict then the elective system will be on a footing

with the appointive system, because that has certainly been on trial, and has certainly been condemned and rejected.

We are told further by the eloquent gentleman from Dauphin, (Mr. MacVeagh,) who I regret is not in his seat, that our present elective system probably would not have withstood the strain of many more years of our terrible civil war. Whether the system would have withstood that strain or not cannot be certainly demonstrated either one way or the other; but of this fact we are certain: That the country never could have withstood the strain of the partisan decisions of the early years of the war, or those that immediately preceded it. If in the providence of God they had stood unreversed, nothing short of Almighty interposition could have averted dismemberment and ruin. We do know that those decisions which were made during the war, from the consequences of which the gentleman feared such dreadful consequences might flow, were made in the interest of liberty and union, founded upon the principles of justice and truth. To them we owe it that we are to-day a united, prosperous and progressive nation instead of dismembered States, plunged in anarchy and ruin. I am not inclined at this day to quarrel with decisions that bridged for us the awful chasm of secession and rebellion.

The problem is this: To exclude politicians from the bench; to secure a non-partisan, unprejudiced, fearless and upright judiciary. To take the power of selecting judges from the people and give it to a partisan Executive, backed by a partisan Senate, does not, in my judgment, afford a solution. The cure, as I think, is to educate the popular sentiment so that it will visit with utter and irreversible condemnation any man who seeks or electioneers for the office of judge. Let the office seek the man, and not the man the office.

In the virtue and in the intelligence of the people rests, not only the perpetuity of our judicial system, but also of our legislative and executive system; and if the people have become so demoralized that they are unfit to elect the judges, by the same token are they unfit to elect any other set of officers; and the only natural, logical sequence of that position is that the experiment of self-government by the people has proved a failure. Nearly a century of a career unexampled in the history of the world for freedom, pros-

perity and strength, has gone far to demonstrate the ability of the American people for self-government. Is intelligence and virtue less common to-day than heretofore? Are the churches and the school-houses, those fruitful parents of virtue and intelligence among the people, any less plenty than heretofore? Do less men and women read and write and worship God than heretofore? I believe in the virtue, intelligence and patriotism of the people, and that Pennsylvania's eight hundred thousand voters, good men and true, are not to be judged and condemned by the acts of the little gangs of great villains who infest the wards of some of our cities. I am one of those who believe that this 1st of May, 1873, is the best day the world ever saw; that not only in enterprise, ability and integrity, but in refinement, education and virtue, the people are in advance of any who have ever lived upon the earth, and that they are as well able to-day as they have ever been before to govern themselves.

Let the evil be cured by educating the popular sentiment—to hate, despise and utterly condemn the peddling politician who trades, traffics and electioneers for the office of judge.

Mr. LANDIS. Mr. Chairman: As a member of the profession, aside from any feeling as far as the interests of the people may be concerned, I am, by reason of such membership, deeply interested in the question which is now presented for consideration before this committee of the whole. Nevertheless, it has not been without some feeling of reluctance that I have risen to say a few words to this committee to justify myself in the vote which I shall cast when called upon to do so.

I see here, sir, a proposition to uproot what I have been led to believe had become part of the fixed polity of our government. I had been led to suppose that among the great cardinal principles which lie at the basis of the government of our Commonwealth, the principle of an elective judiciary had become fixed, that we were anchored as it were; and it is not without some feelings of alarm that I behold here a movement that shall tear us from our moorings and set us again drifting upon the wide sea of speculation and experiment.

I believe, sir, that a majority of the profession are in favor of the elective judiciary. I believe that whatever may have been the convictions of many gentlemen of the profession when the

subject was under discussion some twenty-two or twenty-three years ago, to a great extent they have yielded them, and they are now prepared to acquiesce in that other sentiment which accords to the people not only the right, but the ability, to govern themselves. "Govern," do I say, sir! Is not the judiciary one of the co-ordinate branches of the government? Are we not called upon from year to year to determine by the elective franchise who shall constitute the government. Why, then, I ask, do you propose to except out of this determination the judiciary? Are not the people competent to comprehend that question? Is it so beset with mystery, is it invested with such sanctity that they cannot comprehend it, that they cannot grasp it in all its attributes, that they are not equal to any emergency that may arise, that they are not able to bear the responsibilities devolved upon them in the exercise of that choice and that determination? Why, sir, I blush for the people of Pennsylvania if you thus undervalue them both as to their intelligence, and as to their sense of responsibility. -

I am perfectly willing to accord to the old system all that it may deserve at our hands. I am prepared to bestow upon it all the honor due to its antiquity. But it was discovered that there were defects in that system. The people have endeavored to remedy those defects, and I, for one, am willing now, after the trial of the last twenty-two years, to say that the people have made no mistake in that direction; that they were safe in departing from what they chose to call the time-honored usage, one of the landmarks in the government; and we have since that time, by observation, by actual test, discovered that there are fewer defects in the new than there were in the old system.

The question immediately before the committee raises more particularly the question of an appointed or elective judiciary than, perhaps, any other. As to the other propositions in the section submitted, there will, I am told, be amendments offered that will bring them more properly before the committee. Therefore we have now more specifically and more distinctively before the committee of the whole the question of an appointed or elective judiciary.

Now, sir, what are some of the objections to the appointed judiciary? I presume, if the judges are to be appointed, you will

invest the power to make the appointment in the Executive of the State. Is he the most competent person to discharge this high duty? Is he, by virtue of his office, the better enabled to do it? Is he, by reason of his office, a member of the profession which, perhaps better than any other, can judge of the merits and qualifications of the incumbent for the office? Not at all. Is he, by virtue of his office, invested with any advantages over the people in selecting the judge? I would not in the slightest degree derogate from the character of any of the gentlemen who have occupied that high position in the past history of the Commonwealth; but, sir, we do not know who may be called upon to fill the office; and I, for one, as a member of the legal profession, will never agree that the voice of any single man shall determine who shall fill the judicial positions in this State.

There is another objection: The obligation of gratitude for the favor conferred. We are accustomed to look upon the Governor for the time being, by virtue of his position, and elected to that position by a great political party, as standing at the head of that political party, as the man who has within his grasp and control all the favors and all the rewards of the party. You find, therefore, that the man who is appointed to an office, by reason of that appointment naturally feels himself under obligation to the man who gives him the office. Sir, it is a power that I would not invest in the Executive; it is a position in which I would not place a judge. I would not have him feel that for the next ten or fifteen years he owed his office to the choice and favoritism of him who stood at the head of a great political party. I think gentlemen will agree with me in the statement, that if there is any one trait in human character, it is that we feel under special obligations to that person who has done us a great favor. The man who saves my life, the man who rescues me from peril, places me under lasting obligation to him. But, sir, if the favor or the reward is conferred not by one but by many, the debt of gratitude is divided. The person who receives the reward or the special bounty feels as though he is under no special obligation to any particular one. The judge elected by the people owes no debt save that of a faithful discharge of public duty, without allegiance to either party or class. There is no one to control him in the discharge of the duties of his high office.

Now, sir, one of the great evils in this country has been this matter of executive patronage, and out of that has grown the evil of having in office incompetent persons. It has been one of the complaints of the people, from one end of this land to the other, that there has been too much patronage invested in the Executive. The result has been that you have had persons unfitted for official stations called upon to fill the various offices of the country. So great has the evil become that it has been found necessary in the national Congress to create what was called the Civil Service commission. We all know that in the making of these appointments the Executive has been imposed upon; there have been representations made to him on personal considerations that have led him to make appointments which otherwise he might not have made; and in that way great mistakes have been committed; and hence, as I say, the necessity for this civil service reform. Do we propose to inaugurate, as far as our judiciary is concerned in the State of Pennsylvania the same evil from which the United States are now endeavoring to escape? I trust not.

But it is said we will remedy it by requiring the approval of two-thirds of the Senate. Upon this I might dwell somewhat at large; but it has already been touched upon by various gentlemen, and I not propose to enlarge upon it. But, sir, I submit whether it is not likely that the two-thirds of the Senate would confirm every appointment of a political character that would be made by the Executive. Thus you will fix upon the appointee a double partisan obligation, for he must realize that his appointment is due entirely to party allegiance—not to the party at large, but to those who are the recognized heads and leaders of his political party; for I believe the great danger is not in a man being elevated to this office by the votes of the people, but in his being elevated to the office by those who are the known leaders of the party occupying the position of Senators and filling the Executive chair at the time of appointment.

It is said that perhaps the Senate may be of the opposite political party. That would be very unlikely, extremely so; because it would be almost sure to follow that the party electing the Governor would be able to control the Senate. Therefore the contingency upon which gentlemen hang so much is not likely to

occur. Even if it did, it would give rise to trouble, perhaps conflict, and result, after all, in the confirmation of some one upon whom would be fixed the same partisan obligations.

I am in favor of the elective system because I believe it presents at least fewer of those evils.

There has been very much said here about the corruption of politics. We are told of the intrigues of politicians; we are told of the depths of depravity to which men will descend in order that they may compass some political object. For the sake of the argument, suppose we admit all that. But, sir, in that connection you must recognize this fact, and I take it the majority of the Convention will bear me out in what I say, that whenever it comes to the question of who shall be nominated to fill the office of judge, the politicians, the men who make up the material of the nominating convention, if not in every case, certainly in the large majority of cases, defer to the opinion of the bar of the district or of the State. I know of no case in which the preference of the bar has not been deferred to wherever a nomination for a judicial position has been made.

I had the honor, some years ago, of a seat in the Convention that assembled in Harrisburg which nominated Judge Sharswood. The names of various gentlemen were presented for that position. There was a large number of lawyers in that Convention, and I remember distinctly, and if there are any others here who were in that Convention they will bear me out in what I say, that on that occasion those who were not members of the profession deferred to the opinion of those who were, and when a majority of the legal profession there had determined that their choice was in favor of Judge Sharswood, the nomination was made unanimous. Two or three years ago I happened to be a member of the judicial conference that nominated a candidate for a district judge. In the same way, the county conventions appointed as conferees members of the legal profession, conceding that it was a matter almost entirely within their knowledge and in which they were more interested than anybody else. The matter was left to them to determine, and the members of that profession determined it.

Do you say that because the nomination is made in this manner, therefore the judge must needs be a politician? Not

at all. I think in almost all cases in this State where candidates have been presented to the voters of the people for election, the gentlemen named on both sides have been upright and honorable members of the profession, the election of either of whom would have placed upon the bench a gentleman in every way competent to fill the position.

Do you say that they nominate a politician? I have now within my recollection a case in which it might be admitted that the gentleman nominated was a politician; but, sir, he was no sooner elected and commissioned to the office than he at once cut loose from all party trammels and obligations; and to this day his official conduct has been such that no one can impute to him political motives, and he has discharged his duties in such a manner as to lead men of all parties to declare that he was not only competent to discharge those duties, but pure and upright and unbiased. So that I have no fears that the mere use of the political machinery for nominations, or nominating gentlemen who have hitherto had party affiliations, when all has been approved by the people, will interfere with the proper discharge of the duties of the office.

Then it comes down to a question of this kind: Shall the gentlemen who are to fill these positions be chosen by one man, the Governor, or shall they be chosen by the bar, with the people of the State? I think I have shown that all nominations, or, at least, a majority of the nominations, are now made by the bar, so that, in the latter case, whoever may be elevated by the votes of the people to the bench has the approval of the bar; whereas, he who receives a mere appointment has but the approval of the Executive, who is a partisan, and his adherents in the Senate, who are, likewise, partisans.

But, sir, we were told yesterday, by the gentleman from Dauphin, that there was, by reason of the election of the judiciary, a tendency to a party representation. Now, sir, I deny it, because I believe it has been discovered, and I think it will be received by all as a fact, that those persons who receive appointed offices are more likely to be biased by partisan considerations in their judgments than those who are elected by the people, because it can scarcely be maintained that any one man elected is elected by all the vote of any one political party.

The gentleman further said, when pointing to the fruits of the elective system, that he cared not how well experience may have shown its results to be, it mattered not if, by comparison of the elective system with the appointed system, it appeared that the former seemed the more successful of the two, it did not affect the question as to which was right; and he maintained that the elective judiciary was defective by reason of its being *elective* rather than appointed. This was a very extraordinary argument. It is to contend against that which is established; it is to deny that which is proved; it is to contradict evidence that ought to be final, and it is to say that is not so which is so.

But there is another consideration in connection with this principle of an elective judiciary—

The CHAIRMAN. The Chair will remind the gentleman that his time has expired.

Mr. COCHRAN. I move that the gentleman's time be extended.

The motion was agreed to.

Mr. LANDIS. Mr. Chairman: I am very much obliged to the committee for the extension of my time, and I will not abuse their patience much longer.

When a judge is selected by a particular party and goes on the bench, there is little danger of his being swayed by partisan connection. Nothing is more common, as the history of parties in this country shows, than that before the term of office of any judge expires, the party that elected him will probably have changed its ground. Nothing has changed more rapidly in our country than parties, and I think the experience of the last few years has shown that parties which occupy one position to-day may occupy diametrically opposite positions a year or two afterwards. Even the very recent history of parties has shown that one party was in the camp of their adversaries almost before their tents were struck or their fires extinguished. Therefore it is not likely that a judge, in looking forward to the close of his term of office, would be so affected by partisan considerations, that he could not acquit himself in the discharge of his duties with such uprightness and impartiality as would commend him to the approval of all candid and honest men.

The people of Pennsylvania desire a pure judiciary, and they believe that they are entirely competent to settle these questions for themselves. They point to

the last twenty-two years, and they say, "we have tried the experiment; we are willing, we desire that the new order of things shall continue." They desire that the men they elevate to the bench shall be the men of their own choice. Why not? Is it proposed that we shall take a step backwards? Is retrogression at present the order of the day? Do revolutions go backwards? Not at all. It has not been the history of the country. In every great step of progress the march has been forward, forward to the elevation of the race, forward to the preservation of our liberties, forward in the enjoyment of our rights. Sir, if there have been mistakes, if there have been evils, they have been fewer under the new than under the old order of things.

We will not be misled by appeals for reform, when no reform is required. We will not forget that the people have demanded, tried and accepted an elective judiciary, and, content with that, they desire no change. As members of a reform Convention, we will take no step backward, but preserving that in the Constitution which is valuable, will go forward with our labors, having in view the welfare, the rights and happiness of the people, believing, whatever else we may do, that in no one way can those blessings better be preserved than in securing for them a pure, an upright and a learned judiciary.

Mr. W. H. SMITH. Mr. Chairman: Perhaps I should not venture to say anything on this judiciary question which, by common consent, seems to be left to legal gentlemen, in which this Convention is enviably wealthy. But still, one who has paid some attention to politics and political events may be allowed a few words.

I may say that during the late recess of the Convention, when I was at home among my neighbors, I heard more upon this subject of the appointment of judges, it so happened, than upon any other, and I remember one particular appeal that was made to me to vote for appointed judges. A gentleman said to me, "whatever your Convention does, do provide that the judges shall be appointed;" and he was not one that had lost a suit in court that I know of; he was not one that was soured because the judges were not of his politics, for they were; he was an influential man in the dominant party, and had a great deal to say about the nomination of judges. I know that it

was not from any sour feeling that he spoke thus; but as he was a sensible man, I concluded that it was from a conviction of the erroneous character of our present system.

Mr. Chairman, I am opposed to the choice of judges by popular election. I admit that the scheme might have worked worse than it has done, but things are not now as they were ten or fifteen years ago. The purity of elections which then prevailed, prevails no longer. And the example and influence of the old system of appointment of judges is fast disappearing, and there is no longer any hope that we can save the selection of judges from the common pollution and disgrace into which the whole system of electing all other public officers has assuredly fallen. And it is eminently the duty of this body to save the judiciary from the corruption which has already reached the vitals of other branches of the government. We should secure, if we can, for all time, the purity and independence of the judiciary of the State. Let us not, then, perpetuate the fatal error of electing our judges and clerks of courts. Let us endeavor to apply a brake to the government machine while a brake will prove effective to stop its progress down the easy grade to certain and complete perdition. Let us place that life-saving check in the hands of the Governor and Senate, and hold them severely accountable against the horrors of a corrupt or incompetent judiciary. And woe be unto them if they do not give us honest umpires to settle the disputes that must ever arise among the people. Let the Governor appoint and the Senate confirm the judges of every grade.

It has been, I think, truly said during this discussion, that a Governor would not dare to appoint a notoriously dishonest or incompetent man to a judgeship against the protest of a majority of the bar in the county wherein he was to officiate, and a petition from the people concerned. The selection would not be made in the confusion and excitement which always attend party nominating conventions—and these now make the judges. And if the Governor, with despotism and disregard of sound advice and solemn protest, should send a name to the Senate that was not fit to be submitted, there will still be one hook to hang a hope upon. Unless two-thirds of the Senators were as reckless as himself, such a nomination could not be confirmed.

But I shall be told that the bar, in certain localities, could not always prevent, and have not prevented, the election of unworthy men, who had received party nominations, as judges. I do not deny this; but I assert that the influence of an honest and intelligent bar, and an indignant people, on a Governor, however corrupt, would be more effective to prevent mischief than it could ever be where a popular election would have to settle the question. Not long ago we saw an eminent ex-Chief Justice who was willing to spend the evening of his days as a county judge, defeated by a man who was not worthy to loose the latchet of his shoe. On the other hand, we saw another eminent ex-Chief Justice nominated in a county away from his residence, where he defeated a regularly nominated party aspirant, who was no more fit for the bench than the one who triumphed in the other case. Now, these opposing instances prove nothing but this: That the lawyers of any locality have *some* influence in the election of judges—they would have much more influence upon their appointment. Is not the system of appointment, therefore, preferable? This is the question for us to settle.

I am willing that the lawyers should have all the influence they will probably claim, in the appointment of judges, for my new neighbor, on the right, has taken some pains to convince me that the lawyers are as good, if not better, than the preachers. I think, myself, there is a great deal of human nature in them. History proves them to have been the most abject worshippers of usurped power, and also the noblest and the bravest of the defenders of human rights. And all must concede that they know much better than the ballot-box stuffers and repeaters, who make a mockery of the elective franchise, how to choose an upright and learned judge—better, even, than the honest men who now vote for judges. The lawyers, then, I conclude, would have a beneficial influence on the executive appointment of judges. Their professional pride would prevent them from endorsing unworthy men, who could often get a *party* nomination, and be elected, too.

And just here comes in an incidental reason for the *appointment* of judges. The number of election disputes that courts have to settle increases every year. The judges should be absolutely independent of popular displeasure. They would discharge their duty, *if appointed*,

without regard to the threats of partisans who may hold in their hands the power to depose them if their decision does not happen to suit.

I know that in the general decadence of public virtue, which every thoughtful man must see and deplore, it is not easy to decide whether we shall get better judges by a direct choice by the ballots, corrupted, degraded and falsely counted as they are, or indirectly by the selection of an Executive, chosen by the same corrupt agents and the same unworthy means, but I hold it to be safer to trust the Governor. It has often happened that a man whose character and conduct before assuming office were such as to warrant the gravest doubts as to his honesty or his judgment in selecting men to fill judicial offices, or properly to administer other affairs, has disappointed the fears and expectations of his fellow-citizens, and has made most excellent appointments to office. There are plenty of men who behaved like King Henry V before he attained power, but who, like him, have left their follies and bad traits at the threshold to the palace where they were to administer government or dispense justice. The people have this one chance more to get good judges than they have by the process of direct election, and that is that some notoriously corrupt candidate may alter his ways, and undertake, when elected, to walk in the ways of virtue.

Mr. Chairman, I think we have sufficiently tested the system of an elective judiciary. We have seen men electioneering for the high, solemn and almost sacred office of judge by the same disgraceful means that men seek nominations and elections to the Legislature, and even to offices of inferior importance. They have been known to seek the favor of the lowest class of voters in the lowest haunts of dissipation. And when they have obtained the coveted prize, I assert that it is possible, and even probable, that they have often been appealed to to make things *easy* on those who have helped to clothe them with the judicial ermine, when these, their supporters, have been arraigned before them. I will say, further, that I know as well as I know anything that I did not see with my eyes or hear with my ears, that such appeals *have* been made. Of course I could not prove this in a court of justice; nor do I know that the appeals so made have always been responded to in the affirmative by those who were



elected to the bench by such indefensible means. If you shall let the Governor appoint, he cannot, he dare not, deliberately and wilfully make selections so utterly base as those which have been made by popular vote, and are likely to be more frequent as political morals decline.

• And I think it most fit and proper that the clerks or prothonotaries of our courts should be appointed by the judges with and under whose direction they are to perform their official labor. Why, what does your negligent or incompetent clerk of a court care for the admonitions of a judge of whom he is independent—who derives his place from the same authority that the judge derives his own?

Mr. Chairman, let us do all we can to have our judiciary pure and independent. I feel certain that no Governor will venture to appoint for a judge a young man who has no practice at the bar—who has not the years nor the experience that would enable him to perform the high functions of an umpire between contending suitors. He would not dare to select a man who claimed the office merely and solely as the reward for party labors, and as a stepping stone to further profitable official occupation.

Mr. Chairman, let us put an end to an elective judiciary. Let us ordain that the Governor and Senate shall appoint the judges—that the judges shall each choose their officers of their own courts. And then, when you take from the courts the appointment of every other officer, we may hope that the courts may attain to that purity, and impartiality, and legal learning that now it is certainly in danger of losing.

Mr. LAWRENCE. I rise, Mr. Chairman, to make a practical suggestion. I take it for granted that, important as the subject is, every delegate has made up his mind how he will vote, and this continuous discussion will not change the mind of any member on the floor; and, therefore, while I should be glad to hear from gentlemen on my right and on my left who, I think, want to speak, I hope they will forego the desire they have to speak and let us come to a vote, for speaking will not change the result in any way. Time is more precious than anything else.

The CHAIRMAN. Is the committee ready for the question?

Mr. HUNSICKER. I wish to have the pending question read.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny, (Mr. MacConnell,) to strike out the first three lines of the amendment of the gentleman from Philadelphia, (Mr. Woodward,) and substitute that which will be read by the Clerk.

The CLERK read 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."

Mr. ARMSTRONG. Mr. Chairman: I feel imperatively called upon to say a few words to the Convention. I do not intend to be very lengthy in any remarks which I shall make on this question; but it is proper that the views of the Judiciary Committee should be, in some degree, presented. It has been properly stated that the report so far as it recommends the appointment of the Supreme Court judges by the advice and consent of two-thirds of the Senate was in some degree a compromise.

Mr. HEVERIN. If the gentleman will give way, I move that the committee rise.

Mr. ARMSTRONG. I have no objection.

Mr. HEVERIN. 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 (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 to the committee of the whole to sit again this afternoon.

#### PAPER ACCOUNTS.

Mr. HAY. As it is possible I may not be here to-morrow morning in time to make a report when that order of business is reached, I ask leave to make a report from the Committee on Accounts at this time.

The PRESIDENT. Shall the gentleman have leave to make a report at this time. ["Yes!"]

Leave was granted.

Mr. HAY, from the Committee on Accounts and Expenditures of the Convention, reported that the committee had had under consideration two bills of William W. Harding, for paper furnished to the Printer under the contract with the Con-

vention, one for two hundred reams, \$1,500, and the other for one hundred and sixty-eight reams, \$1,260; that the paper had been received by the Printer and was certified to be in accordance with the requirements of the contract therefor, and that the bills were correct and should be paid. The committee therefore reported the following resolution :

*Resolved*, That the said accounts above mentioned, together amounting to the sum of \$2,760, be and the same are hereby approved, and that a warrant be drawn in favor of William W. Harding for said sum.

The resolution was read twice and agreed to.

Mr. BRODHEAD. I move that the House take a recess.

The motion was agreed to; and 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 o'clock P. M.

#### THE JUDICIAL SYSTEM.

Mr. KAINE. I move that the Convention resolve itself into committee of the whole for the further consideration of the report of 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.

Mr. ARMSTRONG. The amendment and the amendment to the amendment raise two very important questions, and I propose to confine myself chiefly to their consideration. They are questions which not only gave the Committee on the Judiciary a great deal of trouble, but which are well worthy to receive, and I am sure will receive, the most deliberate and careful consideration of the Convention. They are, first, whether the entire body of judges of the whole State shall be appointed by the Governor, by and with the consent of two-thirds of the Senate; and, second, whether, if it should be decided that the judges should be elective, the judges of the Supreme Court shall be an exception, and that they shall be appointed by the Governor, and if so, under what restrictions.

This raises the second class of difficult questions which met the Committee on the Judiciary in the beginning of their deliberations, one of which was disposed of by the vote upon the question of an intermediate court.

I am not in favor of an appointed judiciary, which shall embrace the judges of all the courts of record. I believe that the instances and the arguments which have been adduced on both sides of the question, have been, in some degree, exaggerated. I do not think that the judicial system of Pennsylvania would be very seriously affected by either mode, whether by appointment or election. If we examine the question in the light of mere instances, I apprehend it will be found that those who advocate the election of judges have been too much prone to exaggerate the instances of inefficient judges who have been appointed; and those who would appoint all judges point with equal confidence to the instances in which elective judges have failed. Under both systems there have been judges of eminent ability who have administered the law with great good judgment and learning, and under both systems there have been very bad and inefficient judges; and if the question is to be considered and decided by simply balancing instances, we might consume this session, and many more, in narrating instances on both sides, and yet not reach any intelligent result based upon sufficient reasons. I have great confidence in the people. I have confidence to believe that they always intend what is honest, and that the instinct of the mass of the people ultimately reaches to the wisest and best conclusion.

It is observable in the history not only of the United States, but of the individual States, that wherever abuses have grown so conspicuous and formidable as to touch the heart or interests of the people they have aroused themselves with such power and indignation that the abuses have perished beneath their tread. They are long suffering, but they know their rights and will maintain them. No abuses can long survive which have become sufficiently conspicuous and burdensome to attract the attention of the great masses of the people. I do not, therefore, mistrust them in the election of judges. If the experience of twenty-two years had demonstrated that judges ought not to be elected, we should find the people, by their instinctive intelligence, rising up to correct the abuses which had gathered around the system; and so, if in a quarter of a century to come, or more or less, it should be found that under the elective system great abuses are then developed, the people will then arrest their progress, and change the system if needful. And so it

would be if the judges were appointed. The people keep a watchful eye upon their interests, and do not intend that any part of their system of government, Executive, legislative or judicial, shall fail for lack of their own proper vigilance.

In this point of view I do not see that it would be wise to change the system by which the judges are now elected. In my judgment it is wholly apart from any practical result to consider this question as an abstraction. I am satisfied not only by reflection but by all the light I could gather upon the subject, that the people are utterly opposed to the appointment of judges. If we were to adopt a system which should propose to appoint all the judges, I believe the Constitution would fail in that particular; and if it were made a part of the Constitution, and not separately submitted, it would go very far to defeat the Constitution itself. We are here as practical men. It is not very much to the point, in my judgment, to argue this question abstractly. Moses is not our law-giver, and we are not Israelites, nor is our government a Theocracy; and we gather but very little assistance upon the points now under discussion by going back to illustrations which do not bear upon the present condition of the people. We live in an age and under institutions which have filled the country with popular intelligence. More daily newspapers and periodicals are published in the United States than in all the rest of the world together. Railroads unite our extended and diversified interests, and intelligence flashes around the globe faster than the sun in its circuit.

It is idle to draw illustrations from the condition or experiences of a people that is not like our own; and hence these questions thus discussed become merely abstract. Practically, I believe the people are satisfied with an elective judiciary, and that they would not be willing to change it until such abuses had developed as satisfied them that there was a deep seated necessity for such change, and that such change would afford a remedy.

It would be a pertinent and very proper question to inquire, if these be sound views, upon what ground do you recommend that the Supreme Court shall be appointive? It is a question which ought to be answered, and if the reasons are not satisfactory to the Convention, undoubtedly they will not be adopted. I will say here that while I concur fully in the report of the committee in recommending that the

judges of the Supreme Court shall be appointed with the advice and consent of two-thirds of the Senate, and that all other judges shall be elected, if the reasons upon which that conclusion is based are not satisfactory the report in this regard will be amended; and I would not then think that we had very seriously impaired the efficiency of our judicial system, for, as I said, extravagant views on one side or the other, do not commend themselves to my judgment. Under either system we will doubtless have efficient and excellent judges.

Sir, the people, as I believe, would not consent to abandon their entire elective system, but they might be induced to go so far as to consent to the appointment of the judges of the Supreme Court if they should be satisfied that there was a substantial and sufficient reason for the change. The reason I prefer the election of inferior judges is that they are elected in small districts, and that the people perfectly understand the character and the judicial fitness of the persons for whom they vote, unless it be in exceptional cases, to which I do not attach any very high degree of importance. As a rule, they understand the candidates in their characters, in their learning, and their judicial fitness, as well as any persons could understand them, and are as competent to decide upon the propriety of their selection as the Governor could be—and I believe better; and, therefore, when the election of a judge is submitted to the people of a limited district where he is well known, the chances are that they will make no mistake. But the election of the judges of the Supreme Court presents a wholly different aspect. The masses of the people do not know the candidates either personally or by reputation. The persons who are most fitted for judicial position are those who have not been brought prominently before the public eye in any public capacity. They are persons who, in the quiet of their chamber, in the privacy of purely private life, in the devotion to the high calling they have chosen, have given themselves up to the study of their profession in both its theoretic and its practical aspect. The people do not understand, to anything like the same degree, and practically not at all, either the personal or professional character or judicial fitness of the persons for whom they are called upon to vote where the nominee is to be elected by the State at large.

But there is another objection. The candidates for the Supreme Court would necessarily be nominated by nominating conventions of both parties, called to nominate State officers. A convention thus called assemblies, not for the purpose of nominating a judge, but as a political body, the primary purpose of which is to promote political objects, and you cannot induce a convention of that kind to cast aside the political necessities which surround them as mere partisans assembled for purely partisan purposes. It is thus likely to happen, as it often has happened, that the judge, put in nomination for the Supreme Court is selected as a means of promoting the nomination of some one or more persons who would be of more political significance and importance to the party. To promote the nomination of a desirable candidate for Governor, or Treasurer, or Auditor General, experience shows that there is a pulling and drawing of political lines one way and the other, and an almost irresistible temptation to sacrifice the nomination for judge of the Supreme Court to the availability of other candidates. Thus the Supreme Court would be very likely to fall between these conflicting interests, and not to rise to the full measure of its own inherent dignity and importance, and to stand, as it ought to do, conspicuously paramount to all other candidates. It has been, and is very apt to become, the point of compromise, because it does not embody any very large amount of political influence; and it is purest and best when it does not embody any.

If these reasons be sound, and they seemed to be so to the committee, then the mode of nominating candidates for the Supreme Court, as it is at present practiced, (and there is no probability of a change,) is not a mode of securing the best candidates for that office. The change proposed is that these judges shall be nominated by the Governor, by and with the consent of two-thirds of the Senate. Undoubtedly this Convention will devise a means by which the Senate will be as nearly as possible a non-partisan body; and I am told—I do not vouch for its accuracy, but so far as my recollection goes it is true—that there has not been any Senate of the State of Pennsylvania that embodied two-thirds majority of either party. If it has not been so in the past, it is much less likely to be so under a system such as this Convention will devise, and the direct purpose of which is to pre-

vent the election of a merely partisan Senate.

The nomination must be made by the Governor. At this point I may remind the Convention that the Governor will not be invested with the sole and separate discretionary powers which he has exercised heretofore—for we have already provided a cabinet counsel, whom it will be his duty, under the Constitution to consult—and appointments or nominations for appointments will be made, not upon the individual responsibility of the Governor alone, but upon the united counsel of the Governor and his cabinet. There is, therefore, a sufficient safeguard in selecting nominees, and the requisite majority of two-thirds necessary to any confirmation is a sufficient guarantee that when submitted to the Senate a purely partisan nomination could not be confirmed. It would require a certain number and a sufficient number of the opposite party to concur in the nomination, to guard against mere partisanship. A mere majority of the Senate would probably be in accord with the political party which elected the Governor; but if the concurrence of a considerable number more than a majority be necessary, it follows that the nomination must receive the concurrence of a part of the body not in sympathy with the Governor politically, and thus the office could not be bestowed as a mere reward for partisan services.

The purpose the committee has had in view was to lift the office wholly out of the reach of political interference or influence. In this purpose I am well satisfied that every member of the Convention concurs. Whether they prefer an elective or an appointive judiciary, they do unquestionably concur in the propriety of the purpose the committee had in view, namely, that the Supreme Court judges shall be as far as possible removed from merely partisan influence.

If they are to be nominated by the State at large and depend directly upon the votes of a single party, it subjects them to the influence of the party which elected them, and no judge can break wholly away from it. In times of excitement on popular questions of great public moment candidates are likely to be selected without sole reference to their views upon such questions—and we stand now in the immediate presence of some, which, perhaps, at our very next election will draw the lines of demarcation between accepta-

ble and obnoxious candidates—not with reference to judicial fitness, not in reference to the probabilities of decision upon questions which they will be supposed to have already prejudged. Such will be the questions of license, of women's rights, of labor, of trades unions and others easily to be named. After years of experience and of service, and a sense of personal independence of party power, they may so far drop out of the public mind that political influence upon them will be largely diminished, and, perhaps, after some years, will exercise no influence whatever upon their judgment; but in the early stages of their judicial life, fresh from party strife and partisan opinions, they cannot, if they would, wholly shake off the influence of the political sentiments with which they have been long affiliated; and when political sentiments of any particular cast have become so widely spread and deeply rooted in the public mind as to become the basis of party organization, they do exercise their influence as well upon the judges as upon the people. But if the nomination of the judge is made with the concurrence of a body of men who are non-partisan, and who, by the Constitution, must necessarily be non-partisan as to their confirmation, it cannot with any propriety be said that the candidate owes his election to any party in particular, for no party alone would have the power to put him in his position.

But, sir, there are other reasons. There is a great apprehension in the minds of the people as to the influence of large corporations. It has not only been stated on this floor, but it is in the mind of every thoughtful man. Corporations have the power to exert great influence, and it is possible that they might exert it over the Governor or over the Senate; but it is not as likely to be an injurious influence as if the same degree and amount and kind of influence were exerted to secure ascendancy in a nominating convention. I believe it would be easier for a corporation or a combination of corporations to control the nominations of a party convention than it would be to control the Governor and his constitutional advisors, and afterwards to control the two-thirds majority of a Senate which could not in its nature be in accord, politically, with the party that made the nomination, if we are as successful as we hope to be in securing the Senate against excessive partisanship.

These are the views which have induced the committee, and as I stated in the be-

ginning, in some degree as a compromise, to agree to recommend to this Convention the election of all judges except the judges of the Supreme Court, and to recommend that they should be appointed by and with the advice and consent of two-thirds of the Senate. These views have seemed to me to be sound and reasonable. It is, if you please, a compromise; but it is a compromise in the sense of a reasonable concession to a large body of men in this Convention and a vast body of men throughout the Commonwealth, both in the profession and out of it, who believe that all judges ought to be appointed; and I can see no wisdom in attempting, by the mere force of the majority here, totally to disregard the opinions of a large body of wise and intelligent men throughout the Commonwealth who think differently. To be sure, we are here to exercise our best judgment; but if it be wise in us to regard the views and wishes of the vast body of the people of this State as we understand it, there can be no want of wisdom, and certainly it is only a reasonable generosity, to pay some regard to the wishes and opinions of that very large minority of the State who believe that all judges ought to be appointed.

In this point of view it commended itself to the committee, as a proper suggestion, to elect all judges but the judges of the Supreme Court, and to have them appointed, but hedging around the exercise of the power with such defences as would secure the nomination against partisan influence. If it be not sufficiently guarded, if two-thirds of the Senate be not sufficient, make it three-fourths; put it up to a figure which will render it very highly probable that a partisan nomination cannot be had, or if made, cannot be confirmed. Under such a system I believe our judges would be men who would hold their office more distinctly and nearly free from the influences of partisan association than by any other mode that has been suggested.

Mr. Chairman, I have thus far confined my remarks to the pending amendment to the amendment—I desire to say a very few words on the amendment. The amendment is that proposed by the gentleman from Philadelphia, (Mr. Woodward,) which proposes a substitute for the section reported by the committee. The amendment to the amendment offered by the gentleman from Allegheny (Mr. MacConnell) brings up the single question whether all the judges of the

Commonwealth shall be appointed or elected. His amendment is that they shall all be elected. Upon this I have already commented. As I have said, I cannot vote for a proposition which looks to the election of all the judges, nor for a proposition which looks to the appointment of all. The appointment of the Supreme Court, under the restrictions I have named, is as far as I am, personally, willing to go.

But, sir, I think the amendment of the gentleman from Philadelphia ought not to be adopted at this time. It suggests nothing which is not already embodied in the report of the committee. The first part of the section is that which is now under discussion. It proposes that all judges of courts of record shall be appointed. For that part of the amendment, as I have stated, I cannot vote.

It next provides that: "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 committee will find upon page eleven of the report, section twenty-four, that that suggestion, with some additions and modifications of importance, is already embodied in the report. Therefore, there could be no advantage in introducing it at this point, or in this manner. It is already within the view of the committee as embodied in the report, and to adopt it here instead of the appropriate place which the committee has assigned to it would lead only to confusion.

The amendment further proposes that: "The judges shall appoint clerks for their respective courts and exact security for the faithful discharge of their duties." The sense of the committee was that the prothonotaries ought to be elected. They have not, however, embodied any provision upon the subject in their report, but have left it to the law as it stands at present. They did not think it wise to embody it in the Constitution, as the change is one which, if it should be made at all, shall be only by legislative enactment and not by a constitutional provision which places it beyond the power of change, whatever exigencies might demand it.

The next part of this section, that as to the appointment of clerks of the Supreme Court, is provided for by the committee in the thirty-sixth section.

The next clause of this proposed amendment is:

"It shall not be competent for the Legislature to impose upon judges the choice or election of any other officers, commissioners," &c.

This is also provided for by the report of the committee, as you will see on page six, section eleven, with this difference: There are certain duties which are *quasi* judicial which are imposed by law upon the judges of the court of common pleas, and it was not thought to be best to cut them off entirely. That, however, will be a matter of amendment if such be the judgment of the Convention; but it is distinctly provided in the eleventh section, page six, that the supreme judges shall not have any duties whatever imposed upon them—either of appointment or of any other kind, which are not strictly judicial.

The next clause of this proposed amendment is:

"And said judges shall hold no other office, whether federal, State, municipal," &c.

This is fully covered by the twenty-third section, which will be found on the tenth page of the report.

The next is that:

"The General Assembly may, for cause entered upon their Journals, and upon due notice and opportunity of defense, remove from office any judge," &c.

Our suggestion upon this subject will be found on page 364. It might have been more fully embodied in the report, but it is under the consideration of the committee specially charged with that subject, viz: The Committee on Impeachment and Removals from Office; and it was thought it would be an ungracious act on the part of the Judiciary Committee to encroach upon their functions. That is specifically within their line of duty, and it is right and proper that it should be left there until their report upon the entire subject, which will embrace the removal of judges as well as other officers.

The last clause of the proposed amendment of the gentleman from Philadelphia is:

"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."

This also is fully covered by the report. By the thirtieth section, page twelve, we abolish the associate judges. Thus it will

be seen that the amendment proposed as a substitute by the gentleman from Philadelphia contains nothing which is not already covered by the report of the committee, except the appointment of prothonotaries by the judges of the several courts, with which we do not concur. If adopted in the state in which it stands here, it would be imperfect. The various topics in the sections of the report to which I have referred have been fully considered, and have been reported in connection with other matters which properly appertain to them, and which are not embodied in the amendment now moved as a substitute. If this amendment were to be adopted it would lead to great confusion in the future consideration of the report. It would be very embarrassing and difficult to know just what to strike out, because it had been already inserted, and what to omit. It would delay the Convention in the reasonable and proper considerations of the questions which would come up, as the report is passed in review, section by section. I repeat that there is nothing whatever embodied in the proposed amendment of the gentleman from Philadelphia, with the exception of the proposed appointing of prothonotaries, but what is fully covered by the report of the committee, and the several suggestions are, as we believe, placed in better connection, and some of them more fully, I will not say better, expressed.

I am glad that the question is thus distinctly before the committee. If it be the purpose and sense of the Convention that the judges shall be elected, then I shall, in accordance with the judgment of the House, move at the proper time to amend the section, as reported by the committee, by striking out all that relates to the appointment of the judges, and inserting in the second line:

"The Supreme Court shall consist of seven judges, who shall be elected by the qualified voters of the State at large."

The rest of the section would of course be conformed to the change.

The committee will observe that I have not thus far touched upon the question of the tenure of office, which is not now before the committee, nor have I attempted at all to review the amendment proposed by the gentleman from Allegheny, (Mr. S. A. Purviance,) which, I think, will be found to be, when it is fairly considered by the Convention, an attempt under another name to establish three interme-

diate courts, if they be not more properly committees, between the common pleas and the Supreme Court. But "sufficient unto the day is the evil thereof." When that question shall be before the House it will be considered with deliberate care, by the Convention; but it is not proper that it should be mixed up at this time with the question pending.

I do not know that it is worth while to detain the committee with any further discussion upon this particular point. It involves just two questions upon which I suppose the Convention are as ready to vote now as they will be hereafter: First, shall all the judges be appointed. Upon that I shall feel constrained to vote "no." The next distinct question which will be raised before the committee, should the first amendment fail, will be, shall the judges of the Supreme Court be appointed under the restrictions here provided? That will be the second question; and when they are distinctly settled by the committee they can be embodied in the second section of the report now before the committee, with great distinctness. They will probably be the two questions upon which this Convention will be longer detained and has been longer detained than upon any other which will arise in the further discussion of the report.

Mr. HOWARD. Mr. Chairman, I shall not detain the committee long in the few remarks I have to make; but the question is one of importance, and I deem it to be my duty to say a few words in explanation of the position that I occupy upon this subject.

In the first place, I have practiced law for thirty years. I commenced under the old plan of judges appointed by the Governor, tried it for some seven or eight years, and since then I have had twenty-two or twenty-three years' experience in practising before judges who have been elected by the people; and in my experience the improvement has been very great and in favor of the judges that have been selected by the people. I am opposed, totally, utterly and entirely, to going back upon the people of this Commonwealth in any respect whatever. I believe if ever there was a time in the history of our country when the people should hold on to all their power, that time is now.

Many gentlemen have advocated the plan offered by the gentleman from Philadelphia, (Mr. Woodward,) because it

gives the judges the power to appoint their clerks. The judges of the United States courts have the power, and we generally see them appointing some of their own family as their clerks, and if anything wrong takes place, we cannot make any complaint to the court without its being considered as a personal affront to the judge. We have had that sore experience in our county; in the United States court we have actually suffered from it; and in our State courts, after we got the right and exercised it of electing by the people, we got a better and a more accommodating class of men entirely. If the clerk does wrong in the execution of his office, we have no hesitancy whatever in making our appeals to the court, and we never failed in obtaining the proper redress.

Mr. DARLINGTON. Will the gentleman allow a single observation?

Mr. HOWARD. Yes, sir.

Mr. DARLINGTON. I think he labors under a mistake in suggesting that the courts ever appointed the clerks. They were appointed by the Governor prior to the present Constitution.

Mr. HOWARD. I understand that, but I am speaking now of the United States courts. They appoint their own clerks, and the judges appoint their sons and their sons-in-law, and they keep it in their own families, so as to make a good thing out of it all around, until we have got sick of it and disgusted with it. Of course, the judges of the United States courts still appoint their clerks. We understand that; and this provision will, if adopted, give us the same objectionable mode of appointment.

Mr. Chairman, I have listened with very great pleasure to the argument of the delegate from Lycoming, the chairman of the Judiciary Committee, explaining the special reason why the judges of the Supreme Court should be appointed by the Governor by and with the advice and consent of the Senate, two-thirds concurring, and the reason why the judges of the common pleas should not be appointed by the Governor. It seems to me that this is exactly contrary to the way the thing should be. The local judge, surrounded immediately by his friends and by his acquaintances, by men, perhaps, with whom he has been raised, would be more likely to be influenced by local and political considerations, and there would be more objection to be urged against his nomination and election by the people than there can be

in regard to a judge of the Supreme Court. What is the argument?

It is that the people of the Commonwealth will not be so likely to be personally acquainted with the judge who is brought forward for the Supreme Court as with the judge for the local district. We know that practically, since the election of judges has been given to the people, they have been selected by the members of the bar; and whenever a lawyer is spoken of or talked about as a proper person to be put upon the supreme bench, it begins with the bar at home; it is talked over among the members of the bar, and the lawyers of that bar talk with other members of the bar, and it comes to be understood throughout the State that this person is recommended by the bar as a suitable person to put upon the bench; and in that way we get information just as reliable as we get in regard to the Governor, or as we get in regard to the Auditor General, or to another officer that we are to support upon a State ticket. I can see no reason why it is that we should take from the people of the Commonwealth the election of the judges of the Supreme Court. One gentleman here has argued that he would like to do it because it is strictly in accordance with the theory of government. The judges are not political, and should not be in any way involved in political strife. Well, concede all that. They are not representatives and they do not represent anybody in particular. Very well, we understand that. We know what they are, perfectly well. We know what the judges and their office are. We know that a monarch, the king (the head of a nation) is sovereign, and in his character of sovereign he administers justice. That at least is the supposition. Lawyers have been educated in that belief, and when the burden becomes too great or the population of his kingdom too large for him to administer justice personally—because the functions of a judge are a part and parcel of that sovereignty—then he appoints others to administer justice in the place and stead of the sovereign.

Now, to be perfectly consistent, and to adhere to the strict theory of government that the judge is administering justice by the appointment of, and in the name, and place, and stead of his sovereign, why object to the sovereign people of the Commonwealth of Pennsylvania electing *their* judges? The people of the Commonwealth are sovereign. I do not like any kind of



argument, however plausible it may appear, however it may be glossed over, that betrays confidence in the people. You may polish it, you may varnish it, but after all it is a distrust of the people. There is some reason for going back upon the principle and the theory of our government. It is for the reason that some persons believe the people cannot be trusted to select their judges. Just as many reasons can be given why they should not select a justice of the peace as can be given why they should not select a judge of a county court or of a Supreme Court.

Has the Supreme Court deteriorated, in point of fact, either in intelligence or integrity since the judges were elected by the people? Gentlemen, deprecate politics. It is a fearful thing to get into our courts. Yet we cannot ignore history. There is no use of trying to cover up and hide it, because the thing "wont down." We know that whenever political questions have arisen, and these questions have found their way into the courts, they have been decided just in accordance with the political views those gentlemen who decided them entertained before they went on the bench, in accordance with the party that elected them or the party that appointed them. The argument that the people are not the proper party to be trusted with the selection of the judges, but that the people are perfectly competent to elect a Governor, and perfectly competent to elect a Senate, and that these second-hand removes from the people are entirely and perfectly competent to perform this very high and this very great public duty, is an argument that, in my mind, is not convincing. The instant you adopt it you confess that you have no reliance practically in the people. It is a very beautiful thing to talk about in theory that the Governor is disinterested, and the Senators are disinterested. But you all understand perfectly well, that whenever a man's name is brought forward for an appointment before the Governor, or for confirmation by the Senate, he is backed by his political friends—that the men who surround the Governor, the men who have been instrumental in obtaining his nomination, who have aided him in his election, the men who advise him during his administration, in a large measure control the Governor's appointment. For myself, I hope that this Convention will do nothing whatever to take from the people of the Commonwealth any power that they now

possess. It is better for us, in the history that we are now making, that we should adhere to the principles of our present judicial system and decide that it is safer, by far, to trust the people than to trust any second-hand power whatever.

Mr. HEVERIN. Mr. Chairman: I would not intrude upon the committee of the whole at this time had not personal contact with some of my constituents during the recess of this Convention convinced me that it was my duty, and I do not rise to discuss the general principles involved in the amendment which is the subject of the present discussion, so much as to defend the unjust and disgraceful assault made upon the judiciary of the city of Philadelphia yesterday. I desire, however, to preface what I may have to say in regard to that, by some comments upon the amendment proposed and now pending.

I realize the defects of the present mode under which our judiciary is created. I appreciate the importance of removing the judicial office and the administration of justice far from the corrupting and controlling influences of the political world. I am convinced that the preservation of a pure and honest judiciary is above all things most indispensable to the perpetuation of our free institutions of government; but I am not ready to surrender a system tested by practice and endorsed by experience, without some guarantee of a reformatory result more satisfactory than that which has been the consequence of the elective system. I am not in favor of the abolition of the elective system unless I can see in the preferred substitute an absence of that pernicious dependency which has been complained of and referred to as so compromising to the integrity of this department of our government. I am not willing to take away from the people the power under which our present judges are created and to locate it where the exactions of a dominant political faction may control its action and dictate its conclusions. I am not willing to accept an innovation which proposes to take the source of judicial being from the ruling party and to place it in the hands of a man whose fealty to the same party makes him its servant. I cannot comprehend how the influences which are urged as the objections to the elective system can be separated from the so-called reform proposed by the present amendment.

But say the opponents of this system: "Twenty men at present make the selection of judges in and for the city of Philadelphia!" They say that our judges are at present, under this system, elected by a limited junto in secret conclave. But, Mr. Chairman, the same politicians who now nominate our judges are also responsible for the elevation to office of the Chief Executive of the State, and to that same twenty, to that same limited number, is he bound, and he will bow in submission to their behests and to their mandates; and that, too, without having the opportunity of considering the merits of the opposing elements which may be present in nominating conventions; for it is a well settled fact that among political leaders there are always schisms, there are always factions. In nominating conventions there is at least always a multiplicity of candidates from which to make selections; but if this power to appoint the judges should be conferred upon the Governor, that range of selection would never be within his reach, because only members of the dominant party would apply to the throne of power for the conferment of patronage. But says the gentleman, (Mr. Temple,) who expresses his willingness to become the martyr of judicial wrath, with a parade of courageous integrity and a boast of ostentatious purity more befitting the hustings than the consideration of a deliberative body, "this should not be and I condemn it, because of the many judges of the city of Philadelphia, one chooses to secure his election and nomination by visiting the purlieus of political corruption; and because another of the present judges of this city is a recognized and advertised candidate for a position upon the supreme bench."

I am surprised that any such argument should have been adduced in opposition to the existing elective system. Mr. Chairman, I have often listened to the attacks upon other citizens and other departments of government made by the gentleman who holds a doubtful tenure on a *prima facie* seat, until I have become wearied and tired of them; and I desire, without advertising myself as the friend of either of the judges whom he attacks, and who are both judges that were appointed by Governors, to deny the assertions and calumnies uttered by him who now enjoys the fruits of official position through distorted mathematics, and who seeks to make and establish himself in

public estimation as the chief sentinel on the outposts of political corruption—

MR. HAY. Mr. Chairman: I regret that I am compelled to interrupt the gentleman from Philadelphia, and to call him to order. I do so for these reasons: He has alluded to a member of this Convention as uttering calumnies upon this floor. He has also alluded to that gentleman as occupying a seat here by a doubtful tenure when his right to that seat has been adjudged by this Convention—

MR. TEMPLE. I hope, inasmuch as the gentleman from Philadelphia refers to me, that the point of order will not be pressed. I will take opportunity of replying to the gentleman from Philadelphia at the proper time—

THE CHAIRMAN. The gentleman from Philadelphia (Mr. Heverin) has the floor. The gentleman from Allegheny (Mr. Hay) raises a point of order. The Chair inclines to believe the point of order not well taken, although the gentleman from Philadelphia is verging very much toward a violation of the rules of order. [Laughter.] The gentleman from Philadelphia will proceed in order.

MR. HEVERIN. I will try, Mr. Chairman, to respect the decision and intimation of the Chair. I do not desire to encroach upon the proprieties of parliamentary debate, although I feel very deeply upon this subject, and, although I feel that there has been a very disgraceful and unmanly attack made upon the judiciary of this city, by one who sits on prostituted figures and falsified returns, I know, if he had a practice that carried him (not as a prosecutor or defendant) into the presence of the judges of our city courts, he would receive a different impression from that expressed yesterday.

MR. CHAIRMAN, as to the gentleman referred to as having hob-nobbed with the worst politicians of the city of Philadelphia down town, if I desired to dignify the assertion of the person from Philadelphia, I would say, and I say it authoritatively, that it is untrue. As far as his assault made upon Judge Ludlow is concerned, than whom no more honorable or upright judge ever sat upon the bench in this jurisdiction, or any other, it was unjust, unwarranted by anything in fact or in truth, and it was but the product of a malicious and frothy fancy. And when the gentleman says that he knows that what he states is distasteful to members here, I do not deny that. I do not deny

that anything he may say may be distasteful to members of this Convention; but when he attempts to make an assault, or to cast reflections upon a judge who has established a reputation by an honorable administration and by a propriety of conduct that has invited the endorsement of the whole community, such as Judge Ludlow, I say that he does utter sentiments and expressions distasteful to me, and I feel it my duty to my constituents to make such reply and answer as I deem fitting.

Mr. Chairman, there is one other thought involved in this amendment which has not yet been referred to by any gentleman here, and that is the advantage of a combined system of an appointed and elected judiciary. It seems to me that if the judges of the Supreme Court are appointed and those of the subordinate courts are elected, from the union of these systems there would result an advantage which could not follow from either system separately.

It seems to me that if the judges of the common pleas were chosen under the elective system, they could never be committed to any abuse of that system, because their aspirations would direct their ambitions to the higher court, and those of the higher court could never become sycophants to the influences which might create them judges there, because they might at some time wish to resort to the elective system, in case of a defeat for a candidacy to the higher judgeship. And it seems to me that by the combinations of these systems, by having the higher court appointed, and having the judges of the common pleas courts elected, we shall secure a check upon the evils of both systems, and thus obtain a perfection in the creation of our judiciary which could not be secured by any other means. It seems to me that no judge who now is elected by popular vote could so commit himself to the system which is responsible for his elevation as to bestow partiality as the price of his office, while there was a higher office which would be the goal of his aspiration.

Mr. Chairman, these are crude thoughts; and I shall, at the proper time, if no one else proposes it, offer an amendment to make as an element in our nominating conventions the judges the objects of nomination by members of the bar; or else to appoint a committee of members of the bar throughout the State, consisting of twenty-five or more, to whom

should be referred the appointments of the Governor for ratification. I think under such a system we never should have the evils which are complained of by the person from Philadelphia. There never again would be occasion for any person, either the assaulter of judges who were not honestly elected, or the defender of a system of proceeding intended to reform the whole community, to make such an onslaught as that made yesterday upon our present system, and I hope we shall not hear it again in this Convention.

Mr. PATTON. Mr. Chairman: I desire simply to say that I have been an attentive listener to the very able arguments which have been presented by honorable gentlemen of great learning and experience, on both sides of this very important question; and I am unable to see how we shall be able to secure abler and purer judges to occupy the judicial bench by changing our present elective system.

In any event, sir, our judges placed in office under either system would necessarily be the representative of one party or the other. The great question then is: Which system will secure to the people of our State the best judiciary? To secure a high-toned and honorable court is a paramount consideration, rising above all others, if our judiciary is to remain the strong bulwark of our liberties as Pennsylvania freemen.

I have said thus much, Mr. Chairman, upon this question solely to put myself properly on record; that I may demonstrate by my vote that my confidence is still unshaken in the virtue, intelligence and patriotism of the American people.

Mr. TEMPLE. Mr. Chairman: Having spoken once upon this amendment, I suppose it is not entirely proper that I should again address the committee.

The CHAIRMAN. The gentleman from Philadelphia, having addressed the committee once on this amendment, cannot again address the committee on this question without leave.

Mr. NILES. I move that he have leave.

The CHAIRMAN. If there is no objection the gentleman will proceed. ["Go on."]

Mr. TEMPLE. Mr. Chairman: There is a time when patience ceases to be a virtue. I hardly expected to find myself in the unpleasant position in which I am now placed, apparently, but there is a time when such assertions as have been made before this committee, to-day, de-

serve that the person against whom they are hurled, should be heard in his own defence. I desire to state, right here, and I state it with truth, that the man, upon this floor, who tells this committee that I made any assault whatever upon Judge Ludlow, tells this committee that what is untrue in point of fact, and states what every member of this committee will hurl back to him as positively untrue, and not worthy the consideration of this body.

I am not aware, Mr. Chairman, that those gentlemen in this body who have made this assertion were in the hall when I yesterday addressed this committee. I am willing to rest that point upon the report of the official reporter. What I did say in reference to our local judiciary—for I never mentioned Judge Ludlow's name, or the name of any other judge, except Judge Sharswood—what I did say was, that Judge Sharswood's case was an exception rather than the rule, and that the other judges in the city and county of Philadelphia were selected, as I had stated before, primarily by a score of politicians. I did not refer to Judge Ludlow; I did not refer to any particular judge; and I desire here to say, in vindication of that high and distinguished gentleman, not as the advocate of those who court judicial favors, not as one of those who would come here and fawn so as to secure the smile of judicial favors, but I say it independently and without solicitation on his part, that personally and judicially I regard him as a judge of integrity, and I am proud in this public manner to say it.

I desire to say further, that in the discussion of this question yesterday, I did not refer to Judge Ludlow. If any gentleman supposed I did, why not call my attention to it then? Sir, these attacks on me are made upon purely personal grounds, which should be settled outside of this hall. They are not based upon any principles of public policy or decency or decorum. The assault is made in this presence upon personal grounds.

Now let us come to the assailants; and, first, I have to deal with the gentleman who came here this morning in an unusual manner, for the purpose of making an assault, dressed in his close-bodied broadcloth—

Mr. DARLINGTON. I rise to a point of order.

The CHAIRMAN. The gentleman from Chester will state the point of order.

Mr. DARLINGTON. The point of order is that this debate does not concern the question before the House, and therefore is not in order.

Mr. TEMPLE. I will cut it short.

The CHAIRMAN. The point of order of the gentleman from Chester is not well taken, inasmuch as the subject the gentleman from Philadelphia is now discussing has been discussed by others heretofore. The gentleman from Philadelphia will proceed.

Mr. TEMPLE. I say, Mr. Chairman, that the gentleman or the delegate—I will not resort to the low and degrading name of "person;" I will not forget that I am a gentleman when I am associated professionally and publicly with gentleman—but the delegate from Philadelphia, who saw proper first, this morning, to refer to this thing, (Mr. Worrell,) came here in the trim of his broadcloth cut close to his body. In this unusual garb, he came before this committee to tell a story.

Mr. LILLY. I rise to a point of order.

The CHAIRMAN. The gentleman from Carbon will state the point of order.

Mr. LILLY. This is all a personal matter. Are we to sit here listening to these personal matters?

Mr. TEMPLE. You will not have to wait seven minutes.

The CHAIRMAN. The point of order is not well taken. The gentleman from Philadelphia is replying to a portion of the discussion had on this subject. The gentleman from Philadelphia will proceed.

Mr. TEMPLE. He comes, Mr. Chairman, in this garb, prepared for the assault, and I only wonder that he did not come with his brass buttons on; but he comes with more than that; he comes with his written manuscript, and from the very reading of that manuscript, from the brains contained in it, I charge upon this floor, that he never wrote it or was the author of it; and it was the subject of comment in and out of this Convention, that he had the unmanliness to come here and assail me with the brains of another, whose brains were submitted to writing, and imposed by him upon this body.

Mr. LILLY. Is this in order?

The CHAIRMAN. It is not in order to comment on gentlemen who have no brains. [Laughter.]

Mr. TEMPLE. But, Mr. Chairman, I regret as much as any delegate on this floor that I should be forced into this contro-

versy; but I would be the meanest of men were I to sit still and submit to such an insult as this. The gentleman comes with his essay prepared by another, or probably by the coterie of gentlemen with whom the pen-portraits tell us he is likely to associate in this body. He come here with his essay upon this subject and reads it to the Convention. It goes upon the minutes and becomes a part of the record. He takes the liberty of stating that if I, "the delegate from the third district," had the opportunity of going into court more, I would become more familiarized with the judiciary and would probably be better qualified to discuss this and kindred subjects. I am not quite as familiar, probably, with court proceedings as the gentleman who uttered that language in disguise. It may not be necessary for this committee to know that with some gentlemen it requires years of practice in one of the offices of our highest courts to fit them for the meanest positions at the Philadelphia bar.

But again, the gentleman said, when upon the floor, that he was the champion of Judge Ludlow. He is no greater admirer of that gentleman than I am; but I say to him now, as the special and I believe unwelcome messenger of that distinguished gentleman—let him carry back to him his dispatch—receive, if he pleases, his reward and take it home with him, and keep it until the day of his death, for it is his greatest inheritance.

One word, sir, in reply to the other gentleman who has referred to this subject, (Mr. Heverin,) and who has spoken of myself as "the person." I shall speak of him as "the delegate from Philadelphia at large." He says that this matter was spoken of as if we were upon the hustings; that his blood boiled; that he became impatient, and that he felt as if he must speak on this subject. Why all this? The gentleman told us in his first breath, that during the recess which has just taken place, he had communed with his constituents; he had been at the communion table with his constituents.

All I have got to say, Mr. Chairman, is that if he derived such information and such language as he uttered on this floor at the communion table, he has worshipped at a communion table that is a disgrace to the hustings and a dishonor to the city of Philadelphia. He has communed with his constituents and what has he brought us? Has he brought us

an argument on this subject? Oh, no! He has appealed to his followers and the rabble of this town to listen to him, and he comes here, imposing upon this body, to settle a difficulty that has nothing whatever to do with this Hall, and which he dare not settle in any other way, to make a personal assault.

I say to him, in conclusion, as I said to the other gentleman, when he carries back his message to the friends of the distinguished gentleman whose cause he has so unnecessarily espoused here, (because he himself would not receive it; he is too honorable not to despise such meanness,) and when he is communing again at the communion table with his constituents, let him be sure to learn the first principles of a gentleman before he associates longer with them.

Mr. SIMPSON. Mr. Chairman: I think it was about time that we had taken up the subject that was before the House. [Laughter.] I propose to say a few words upon it. As you are aware, sir, I do not make very long speeches; but before casting the vote I shall cast on the pending question, I desire to give a reason for the faith that is within me, and more particularly in view of the fact that I find myself differing from gentlemen with whom I usually agree.

We were told, this morning, by the delegate from Pittsburg, (Mr. W. H. Smith,) as an argument why the Governor should appoint, rather than the people elect, judges, that the elections were not as pure now as they were when we changed from the appointive to the elective system. I differ from the gentleman in the facts and the history of the case. If my memory serves me aright, the election frauds prior to 1851, the first time at which we elected judges, were quite as gross as they have been latterly; perhaps not so extensive in the territory where committed, but quite as gross in amount; confined, perhaps, to fewer localities, but done in the wholesale, for the election frauds of 1850 are well known to the community. Beside that, I think it is a part of the business of this Convention to so frame the organic law of this State as to render election frauds impossible, or, if committed, that they may be readily discovered and brought to light; and that disposes of that argument.

We had, from the gentleman from Dauphin, (Mr. MacVeagh,) a very high eulogy upon the American people. He tells us that they "can be trusted," and

yet he is not willing that they shall select their judges. I think his argument fails of any conclusion when he decides, as he did, that, although they are trustworthy, yet they ought not be allowed to select those who are to construe their law. They may elect their legislators, but not the men who are to pass upon the construction of the laws. If either branch is deserving of preference, it is rather the latter than the former. I would rather have the power of construing laws than of passing them.

The gentleman from Philadelphia who sits in front of me, and who addressed the Convention yesterday, (Mr. Gowen,) while advocating the system of appointing judges, laid down, as a rule, that which cut up his whole case by the roots. He said to the committee, and I agree with him, that we shall have the best judges when they are best paid. If it be true that we shall have the best judges when they are best paid, can they not be as well paid under an elective system as under an appointive one? What difference is there in that respect? Cannot their salaries be as large, coming from the public treasury, under the one system as under the other? If it be true that we shall have the best judges when they are best paid, then we can have them under the elective system as well as under the appointive.

We are also informed by that gentleman that the only case that he knew of where a party submitted his authority or his claim to authority to the people and was rejected, was some one thousand eight hundred years ago, when the mob cried out, "Crucify him! Crucify him!" I do not think that person has read that portion of sacred writ recently, or he never would have cited that as an example, for if I have read it rightly, it was the mob of Jerusalem that uttered those cries and not the people of Judea. No question of the authority of Christ was submitted to the people of Judea or to the people of Jerusalem; but it was the mob of Jerusalem that cried out, "Crucify him! Crucify him!" And who submitted the question to that mob? Pilate, the appointed Governor of the Emperor of Rome.

Sir, if I have read history aright, some of the most infamous judges that ever sat upon the bench were appointed to the office, and not elected; and I say here that for every judge that can be pointed out in Pennsylvania, under the elective system,

who was incompetent or who was a bad judge, I will give the parallel amongst those who were appointed.

Nor can I conceal from myself the fact that we are indebted to the elective system that we had a Woodward upon the bench; that we had a Thompson, (who was so eulogized yesterday by the gentleman from Philadelphia, (Mr. Gowen,) upon the bench; that we had a Strong upon the bench; that we had a Black upon the bench. Why, sir, in 1857 we had a Governor of this Commonwealth who would not have appointed either Chief Justice Thompson or Justice Strong. He was a Republican and would not have appointed Democrats; but the people of this State elected those two distinguished men, and the State was honored by their election. Why, sir, here in Philadelphia, Judge Sharswood, a prominent Democrat, was twice nominated by all the political Conventions and elected to the bench, and that, too, at times when a large majority of the voters of the city and county were opposed to the Democratic party.

Now, sir, I want to say to this Convention that if there be any set of men who are at fault for bad men getting upon the bench under the elective system, it is the bar of the State. But a few years ago, in 1867, when Mr. Justice Ludlow's term was about to expire, and it was necessary for the people of Philadelphia to select some one to fill the vacancy, he was re-nominated. When the Republican convention met in this city, one portion of them, and I am free to say the minority, were opposed to making any nomination against him. He had served the people faithfully and well, and they were satisfied with him and preferred that he should remain upon the bench rather than get one whom they did not know; but when the Republicans met in convention the friends of two other candidates, combining together, determined to make a distinctive partisan nomination; and it is within my knowledge that two or three men in that convention made up their minds that the men who had thus decided should reap no fruit from their decision, and they set to work and carried through a third man who had positively declined, by written letter, to be a candidate. Despite his written declination, despite the opposition of the two, they succeeded in nominating the third candidate, and the two were both left out in the cold. But two or three men did that work in the convention.

I say, sir, that if we have had bad judges under the elective system it is the fault of the bar that those men have been elected; for if they will, they can so influence the minds of the people as to induce them to select the best men, irrespective of party politics; and that is the way it ought to be. I have never hesitated to scratch my ticket upon the judiciary, and I never will; and I consider myself as pronounced a Republican as there is on this floor. I have not always voted for the nominees of the Republican party for judges, nor do I expect always to do so. If they nominate men whom my judgment approves, I will vote for them; if they nominate those whom my judgment does not approve, I will not vote for them; I will vote for their opponents if I believe them to be good men.

Under this system I am reminded that two counties in this State, both of them Republican by majorities large enough to manage affairs, have elected, on two successive occasions, judges from the ranks of the opposition, because they believed them to be good men. I refer to Venango and Mercer; and will anybody doubt the Republicanism of those two counties?

Sir, I would not take away from the people this power which is now vested in them, and which has worked so well for twenty-one years; but I am willing, as a member of this Convention, to agree to this, and I make this proposition to the committee: pass this section, leaving the question remain just where it is, allowing the election of judges by the people, and submit to a separate vote of the people at the same time another section to take its place, providing for the appointment by the Governor, with the concurrence of two-thirds or three-fourths of the Senate, and then the people will have before them both systems; they will have in the text of the Constitution the present provision as it is; they will have before them the power of appointment, if they desire it, and if they adopt that it will be their work, and not take the work of this Convention. I trust that that course will be pursued.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. McConnell) to the amendment of the gentleman from Philadelphia (Mr. Woodward.)

[Several delegates: "Let it be read."]

The CHAIRMAN. The amendment to the amendment will be read.

The CLERK. The amendment is to strike out all down to the word "they," in the third line, and insert:

"Judges of the Supreme Court shall be elected by the legal voters of the State at large, and the other judges by the legal voters of the district in which they are to exercise their offices respectively."

Mr. BANNAN. I call for a division of the question.

The CHAIRMAN. In what respect does the gentleman request that the division occurs?

Mr. BANNAN. "The judges of the Supreme Court shall be elected by the legal voters of the State at large." Let the question be taken on that division.

The CHAIRMAN. The amendment is susceptible of division. The question before the committee is on the first division of the amendment just stated by the gentleman from Schuylkill (Mr. Bannan.)

The first division was agreed to; ayes, sixty-seven; noes, twenty-three.

The CHAIRMAN. The question now is on the second division of the amendment, to insert, "and the other judges by the legal voters of the district in which they are to exercise their offices respectively."

The second division was agreed to; ayes, sixty-nine; noes, twenty-one.

The CHAIRMAN. Both divisions of the amendment to the amendment having been adopted, the amendment to the amendment is agreed to. The question is on the amendment as amended.

Mr. ARMSTRONG. I hope now that the amendment as amended will be voted down, not with a view to embarrass at all the vote which has already been taken, but in order that we may return to the section as reported by the committee, which I will move immediately to amend, by inserting in the second line, "shall be elected by the qualified voters of the State at large." That will make the section, as reported from the committee, provide that both the judges of the Supreme Court and all the other judges of the State shall be elected; but for the reason I have stated, that the proposed amendment embraced other matters which are already provided for in other parts of the report, it would seem not appropriate to put it in at this time.

Mr. NILES. I wish to ask the chairman of the Judiciary Committee if he desires by his amendment to amend the section in such a way that all the judges are to be elected?

Mr. ARMSTRONG. Yes, sir; according to the vote of the committee just taken.

Mr. NILES. Then I shall vote with the gentleman.

Mr. WOODWARD. I hope the section I offered will not be voted down, for the very reason the gentleman has just suggested, that it contains some things which are not in the report, and things which in themselves I think are valuable.

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

Mr. COCHRAN. I only want to have a fair understanding about this matter. I understand the gentleman from Lycoming to say that all the other matter in this amendment was embodied in other parts of the report of the Judiciary Committee, although it was not here. I understand the gentleman from Philadelphia to say that there is matter in this section which is not in the other parts of the report. I should like to understand exactly how that is, because I am prepared to vote against the amendment to the amendment, provided there is no valuable matter in it which is not covered by the report of the committee.

Mr. ARMSTRONG. I would state in explanation that I ask that the committee shall vote down this section of my friend from Philadelphia, not as he says, because it contains matter which the committee have not reported, but because it does contain matter which the committee reported in other places, which will come up more appropriately in the sections where it is reported.

The CHAIRMAN. The gentleman will understand that the section is not before the committee, but the amendment.

Mr. ARMSTRONG. I am aware of that, and I am asking the Convention to vote down the amendment, because it contains matter which is already in the report of the committee in other places. It does contain one matter which is not there, and that is the question of prothonotaries. The section provides that they shall be appointed by the courts; the committee prefer to leave them, as they now are, to be elected by the people.

The CHAIRMAN. The reading of the amendment as amended has been asked for, and the Clerk will read it.

Mr. ARMSTRONG. I inquire of the Chair if it will be now in order for me to move an amendment to the section, in the second line, to strike out the words "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," and to insert in lieu thereof the words, "elected by the qualified voters of the State at large."

The CHAIRMAN. The Chair apprehends that that would not be in order at this time.

Mr. ARMSTRONG. Then I give notice that I will offer that immediately after the amendment of the gentleman from Philadelphia be voted down, if it be.

Mr. D. N. WHITE. I move to strike out the words, "clerks for their respective courts, and exact adequate security for a faithful discharge of the duties, and," so as to read :

"The said judges shall appoint all necessary criers and tipstaves, &c."

Mr. ARMSTRONG. That is a matter of regulation by law, and need not go in the Constitution.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. D. N. White) to the amendment of the gentleman from Philadelphia (Mr. Woodward.)

The question being put, there were: Ayes, twenty-two; not a majority of a quorum. So the amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Philadelphia as amended.

Mr. HORTON, and others. Let it be read.

The CHAIRMAN. The Clerk will read the amendment pending before the committee.

The CLERK. The words proposed to be inserted in lieu of section two by the amendment as amended are :

"The judges of the Supreme Court shall be elected by the legal voters of the State at large, and the other judges by the legal voters of the district in which they are to exercise their offices respectively. 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 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."

Mr. DARLINGTON. I move to amend this amendment, by striking out the words: "The said judges shall appoint clerks," and insert: "The judges of the Supreme Court shall appoint their prothonotaries."

Mr. ARMSTRONG. That is provided for in a distinct section, as I have already explained several times.

Mr. DARLINGTON. What I want to avoid is confusion by applying the name "clerks" to the officers of the various courts which are embraced now in the section as amended, unless we change the name from "prothonotary" to "clerk" throughout, which, by-the-by, I should be very glad to see done if we are ready to do it. They are now prothonotaries and not clerks of all the courts of law.

The CHAIRMAN. The question is on the amendment of the gentleman from Chester to the amendment of the gentleman from Philadelphia.

The amendment to the amendment was rejected.

The CHAIRMAN. The question now is on the amendment.

Mr. HAY. I have very great hesitation in attempting to criticise anything that comes from the gentleman from Philadelphia; but it seems to me rather improper that we should make constitutional officers of criers and tipstaves. I would suggest a change of phraseology, to read, "and all other necessary officers." We give the courts the right to appoint their clerks, and I propose to let them appoint all minor officials. I think that is the preferable language. I move, therefore, to strike out the words "and all necessary criers and tipstaves," and insert "and all other necessary officers."

Mr. WOODWARD. I accept that amendment, if I have the power.

The CHAIRMAN. The modification suggested by the gentleman from Allegheny is accepted, and is, therefore, part of the amendment of the gentleman from Philadelphia. The question is on the amendment of the gentleman from Philadelphia as amended.

The amendment as amended was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. ARMSTRONG. I now move to amend the second section. If the Convention will indulge me, I will read the section as I propose to amend it:

"The Supreme Court shall consist of seven judges, who shall be elected by the qualified voters of the State at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not be eligible to re-election. The judges who shall be in office when this Constitution takes effect shall continue until their commissions shall severally expire. Two judges in addition to the number now composing said court shall be elected. 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."

That will be the section as amended.

Mr. BUCKALEW. Mr. Chairman: I do not yet understand what is the precise amendment proposed. Is it confined to the single question of election, or does the gentleman offer a new substitute?

Mr. ARMSTRONG. I suppose that by common consent that part of it which relates to the election of judges may be inserted.

Mr. BUCKALEW. I should like to have it determined by itself first.

Mr. ARMSTRONG. I move that amendment in accordance with the vote which has been already taken by the House.

The CHAIRMAN. What is the amendment offered by the gentleman from Lycoming?

Mr. ARMSTRONG. It is to insert, "shall be elected by the qualified voters of the State at large," in lieu of the provision for appointing the Supreme Court judges.

Mr. BUCKALEW. Let the question be taken on that by itself.

The CHAIRMAN. Does the gentleman from Lycoming offer that amendment?

Mr. ARMSTRONG. I do. Perhaps it would be more intelligible to offer the

amendment *seriatim*. I therefore move to strike out the second and third lines, down to the word "they," and insert "elected by the qualified voters of the State at large."

Mr. WOODWARD. I wish to move, at the proper time, to strike out the whole section and substitute another.

The CHAIRMAN. Does the gentleman from Philadelphia offer an amendment now?

Mr. WOODWARD. I shall at the proper time. I do not want to embarrass the gentleman in getting the section in shape. I am going to move to strike out the entire section, and substitute section three of my minority report.

The CHAIRMAN. The question is on the amendment of the gentleman from Lycoming.

Mr. DARLINGTON. I wish to know whether by adopting the amendment proposed by the gentleman from Lycoming we adopt the number of seven judges. ["No!" "No!"] It is so as stated. I should like to have it read, to see what the whole of it is.

Mr. ARMSTRONG. It is hardly worth while, I suggest, to go over the section so frequently. I propose to offer certain amendments *seriatim*, in order that they may be distinctly comprehended by the committee.

Mr. DARLINGTON. I understood the amendment to be to strike out the second and third lines, which leaves the first line with "seven judges" in.

Mr. ARMSTRONG. The gentleman will allow me to state that the purpose now is to conform the section to the vote of the committee just taken, making the Supreme judges elective and nothing else. After that is done, and the section thus perfected in accordance with the vote which has been already taken, it will be open to any gentleman to move to strike out the word "seven" and insert "five" or "eight" or "ten," as may be deemed best, and also to ask a separate vote on the question of the tenure of office.

The amendment of Mr. Armstrong was agreed to.

Mr. ARMSTRONG. I now move, Mr. Chairman, to amend, by striking out the word "re-appointed," at the end of the second sentence, and inserting in lieu thereof the words "eligible to re-election," so that the sentence will read, "shall not be eligible to re-election."

Mr. BUCKALEW. Mr. Chairman: This is an amendment which, in the nature of

things, ought to be connected with another proposition, and that is the tenure of these judges. A great many members of the committee of the whole will, doubtless, be disposed to vote for the ineligibility of judges to office if the tenure should be fixed at twenty-one years, who would not vote for it if the tenure be fixed at fifteen years. I submit, therefore, that we ought to act on the question of tenure before we are called to pass upon the question of eligibility. It is very important to vote upon this before we have determined the prior question, and I therefore suggest to the chairman of the Committee upon the Judiciary that he withdraw his amendment at this time, in order to allow the committee of the whole to settle the question of tenure.

Mr. ARMSTRONG. If it meets the views of the committee of the whole to discuss the question of tenure at this time, and it will facilitate the business of this committee, I will withdraw the amendment if any gentleman will move to strike out "twenty-one years" and insert some other number.

Mr. MACCONNELL. I move to strike out "twenty-one years" and insert "fifteen years."

Mr. ARMSTRONG. Then I withdraw my amendment, in order to allow this question of tenure to come before the committee of the whole.

The CHAIRMAN. The amendment of the gentleman from Lycoming is withdrawn, and the question is upon the amendment of the gentleman from Allegheny, to strike out "twenty-one" and insert "fifteen."

Mr. ARMSTRONG. Mr. Chairman: The tenure of the judges is another of those difficult and perplexing questions which the Convention desired to consider at length, and upon which I hope we may be able to reach a satisfactory conclusion. In the judgment of the Committee on the Judiciary the term of fifteen years is both too long and too short. It is long enough to carry a judge of the age of those who are ordinarily elected, according to the experience of the State since the elective judiciary was adopted, just to that point where he is wholly unfitted for any other business, where he has a few years of good judicial service still left in him but is entirely too old to be re-elected.

There has been frequent allusion made in this Convention to the distinguished chief justice of the State whose term lately

expired, and I do believe that no one reason was so potential in defeating his reelection as the well settled conviction among the people of the State that there did not remain in him fifteen years of good judicial service, whilst all conceded that there was in him still at least five or six years, and possibly more, of as good service as could be rendered by any other citizen upon the bench of the Supreme Court. Now, twenty-one years is long enough to take out all the efficient, active service that there is in any man who ought to go upon the bench, and by a subsequent section of the article reported by the Committee on the Judiciary the age of the judge for the Supreme Court is defined. It will be found in the second paragraph of section twenty-four, and is as follows:

"No person shall be eligible to the office of judge of the Supreme Court unless he be at least forty years of age."

So that twenty-one years' service would make a judge sixty-one years of age at the expiration of his term of office, if he were forty years old at the time of his election. Forty years is as young as a person ought reasonably to be when he is placed upon the bench, and the experience of this State has been that most of our judges have been older than that; have been at least fifty years old when they went upon the bench.

With these views I hope that the tenure of office, as specified in the section under consideration, will not be disturbed, but that it will be retained as the Committee upon the Judiciary have reported it, at twenty-one years, or thereabouts. If there are seven judges of the Supreme Court, twenty-one years will give them three years each to preside over the bench, and makes the election of the supreme judges recur at regular intervals.

Mr. WOODWARD. Mr. Chairman: Will it be in order for me now to strike out the section, and to move to substitute section three of my amendment?

The CHAIRMAN. Does the gentleman propose to strike out the entire section?

Mr. WOODWARD. The entire section.

The CHAIRMAN. And to substitute the third section of your amendment?

Mr. WOODWARD. Yes, sir; the third section.

Mr. ARMSTRONG. Mr. Chairman: I rise to a question of order. It would not at this time be in order for the gentleman from Philadelphia to move the amendment which he has indicated. There is a

question pending before the House upon the amendment of the gentleman from Allegheny, to strike out "twenty-one" and insert "fifteen," and therefore the amendment of the gentleman from Philadelphia would not be germane to the amendment offered by the gentleman from Allegheny.

The CHAIRMAN. The amendment of the gentleman from Philadelphia would not be germane to the pending amendment, and is therefore not at this time in order. The Chair misapprehended, for a moment, the fact that the amendment of the gentleman from Allegheny was pending.

Mr. WOODWARD. When the House has voted upon that amendment will my amendment then be in order?

The CHAIRMAN. Yes, sir.

Mr. STANTON. Mr. Chairman: I understand the question before the House to be upon the motion of the gentleman from Allegheny, to reduce the tenure of office from twenty-one years to fifteen.

The CHAIRMAN. That is the question. The amendment of Mr. MacConnell was rejected.

Mr. WOODWARD. I now move to amend

Mr. ARMSTRONG. I desire to appeal to the gentlemen from Philadelphia to allow the other amendments, by which it is proposed to perfect this section, to be passed upon by the committee of the whole before he introduces his amendment.

Mr. WOODWARD. Will the gentleman from Lycoming please indicate what those other amendments are?

Mr. ARMSTRONG. They are ineligibility to re-election, and some other formal matters.

Mr. WOODWARD. Well, sir, I do not object to waiting until they are decided, if by so doing I do not impair my right to present my amendment.

Mr. ARMSTRONG. Mr. Chairman: I now move to amend, the gentleman from Philadelphia having kindly consented to that arrangement, by striking out the words: "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."

I move this amendment, because as the section has been amended the words are now unnecessary.

The amendment was agreed to.

Mr. WOODWARD. I now present my amendment.

Mr. EWING. If the gentleman from Philadelphia will yield, I desire to ask the chairman of the Judiciary Committee a question.

Mr. WOODWARD. Certainly, I yield for that purpose.

Mr. EWING. Does he not also wish to change the word "him," at the end of the first sentence, into "Governor?"

Mr. ARMSTRONG. That has been voted out.

Mr. WOODWARD. Does any other gentleman desire to interrogate the chairman of the Committee on the Judiciary?

Mr. MACCONNELL. I would like to ask the chairman of the Committee on the Judiciary if he does not desire to leave in the section the commissioning of the judges by the Governor?

Mr. ARMSTRONG. They should be commissioned by the Governor, but there is a provision for that in another place in the article. It did not occur to me at the time that the gentleman from Allegheny (Mr. Ewing) asked his question. There is another section of this article which provides that all judges of courts of record shall be commissioned by the Governor, so that the words are unnecessary.

Mr. WOODWARD. I now move to strike out the entire section, substituting for it section three of my minority report.

The CHAIRMAN. The Chair would inform the gentleman from Philadelphia that that cannot be done at this time. The committee of the whole cannot strike out that which they have just inserted. The gentleman from Philadelphia can move to modify the section.

Mr. WOODWARD. Then I move to modify the section, by substituting for it section three contained in my minority report.

Mr. ARMSTRONG. I rise to a question of order. Perhaps the question which the Chair has decided is not sufficiently comprehended, but it occurs to me that the Chair is perhaps inadvertently in error on that point. Where an amendment has been made to a section, and the section as amended has not been adopted, I think it would be in order to move a substitute for the entire section, striking out the amendments which have just been voted in connection with other language.

The CHAIRMAN. That is not the understanding of the Chair.

Mr. WOODWARD. Is there no way of getting before the committee of the whole a substitute for the section after these amendments have been voted in?

The CHAIRMAN. The gentleman from Philadelphia can move to modify the section; that is, he can move to strike out some of the words that have just been placed in the section in connection with other words, but he cannot strike out entirely that which has just been voted in by the committee of the whole.

Mr. ARMSTRONG. There has been no vote taken on the section.

Mr. LAWRENCE. Do I understand the Chair to say that we cannot strike out a whole section, part of which has been amended?

The CHAIRMAN. The Chair decides that you cannot strike out all that which has been inserted by a vote of a committee of the whole. The section may be modified by striking out part of that which it has inserted, in connection with another part of the section.

Mr. LAWRENCE. I think the rule is this: You can strike the part which has been inserted, provided you strike out with it another part of the section, or all of the section. Hence the gentleman from Philadelphia is in order in making his motion to strike out and substitute.

Mr. KAINE. Certainly.

The CHAIRMAN. So that the question may be properly understood, the gentleman from Philadelphia will indicate how he desires to amend the section.

Mr. WOODWARD. I rose some time since to ask the Chair whether I could make a motion to strike out the section under consideration, and substitute therefor section third of my minority report from the Committee on the Judiciary. I understood from the Chair that such a motion, though not in order at that time, would be in order after the formal amendments of the gentleman from Lycoming had been acted upon by the House. I then gave way in order to allow the chairman of the Judiciary Committee to present certain formal amendments, which, in his judgment, were deemed necessary to be submitted, before I brought my amendment up for consideration. In order that I might not embarrass him and the committee of the whole, I delayed making my motion, relying upon the promise of the Chair that my amendment would be in order as soon as these several formal matters should be disposed of; and now if the Chair is going to rule that my time

has slipped away, I think it will be pretty sharp practice.

MR. ARMSTRONG. I hope the Chair will withdraw his decision.

THE CHAIRMAN. For the purpose of getting the question before the committee of the whole, the Chair will withdraw the decision which he has made, and allow the gentleman from Philadelphia to offer his substitute for the entire section.

MR. HUCKALEW. I desire to call the attention of the Chair to what seems to have escaped him. We are not considering, now, a section which the committee of the whole has voted in at all. Observe, we are upon a section reported by the Committee on the Judiciary, and that section has been amended in some of its details. Unquestionably, an amendment to strike it all out will be in order, if it is not an amendment which merely strikes out the amendments which we have voted in. It is proposed to strike out the whole section of original matter which we have not touched, carrying with it, as matter of detail, the amendments that we have put in. I suppose the misapprehension of the Chair arose from supposing that we were voting upon an amendment that had been voted in. The gentleman from Philadelphia does not propose to strike out what we have voted in. He proposes to strike out the whole section of the committee, simplifying the phraseology which is to be given to the section.

THE CHAIRMAN. The Chair understands the question. The amendment of the gentleman from Philadelphia will now be read by the Clerk.

MR. WOODWARD. The Clerk has it, I believe.

THE CHAIRMAN. The gentleman from Philadelphia moves to strike out the entire section, and insert what will be read.

The Clerk read the words proposed to be inserted, as follows:

"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."

MR. WOODWARD. The committee will observe that there is nothing in this section which conflicts with the vote already taken, making judges, especially judges of the Supreme Court, elective; but, having elected them, it does provide some improvement, I think, in our judicial system. I submit it with great deference to the judgment of gentlemen around me.

The power to order an issue in a pending case is one which will rarely be exercised, and yet there are times when it is very necessary that that power should exist and be exercised, because sometimes a case comes up so circumstanced as that the court cannot get at the very law of the case as the record stands; the issue has not been framed in such a way as to present the very question. I would give the Supreme Court power to direct an issue that would present the real question. It is a mere matter of practice, which gentlemen may consider for what it is worth.

There is one important provision in this section, which is that which fixes the Supreme Court at some one place. I leave the selection of the place to the Legislature. My own opinion is—I have no hesitation in expressing it—that that place ought to be the city of Harrisburg, the seat of government. That is where I think the highest judicial tribunal of the Commonwealth ought to sit. But if not the city of Harrisburg, then let it be the city Philadelphia, or the city of Pittsburg; or

any other convenient place. It is of the last consequence to the people of Pennsylvania that that court should at last be located somewhere. Blackstone defines a court of justice to be a "*place* where justice is judicially administered;" but our Supreme Court never has had a place yet. It has been peripatetic all its life; it has been on wheels; and I think that will account in some measure for the rotary character of its decisions. It has been rolling from one end of the Commonwealth to the other, and sometimes from one end of the law to the other, and I have no hope for fixedness of decisions until we can fix the bodies of the judges in some one place. I do not care a groat where that may be, beyond the Allegheny mountains or in a more sequestered spot, but it should be *somewhere* if you mean to have a respectable court and steady decisions.

My amendment provides for that. Then there will arise occasions when the court ought to have liberty to go elsewhere. Small pox, cholera, a contagious disease, may break out. I remember once that the cholera came to the city of Pittsburg when the Supreme Court was sitting there, and we went to Erie in order to get into purer air. That is very necessary at times. Therefore my amendment provides that they may adjourn for any single session, or less than a session, to any other place.

But here is something of importance; My amendment limits the number of judges to five. I hope this Convention will not increase that number; and especially do I hope they will not increase the tenure. The tenure now is fifteen years. It is long enough. Judges do not go upon that bench until they have had considerable service at the bar, generally, in the inferior courts, and are men advanced in life, and I do not believe in restoration. I do not provide that a judge shall be or shall not be re-elected. I leave that free to any judge who can be re-elected and wishes to be. My own opinion is that a judge of the age of those who usually go upon the supreme bench ought not to be re-elected; that fifteen years is long enough for any man at that age, considering the arduous and responsible duties that he has to perform, if he performs them. I have known judges who did *not* perform their duties on that bench, and for them fifteen years are too long.

But the idea of extending the judicial term in Pennsylvania now, after the experience we have had for the last

twenty-two years, I think is an inadmissible idea, because I can tell you, sir, that all those improvements in our judiciary that we have heard so much about in the last few days, as vindicating the election of judges, are due to the limited tenure which the Convention of 1837 introduced, and that principle has worked those improvements in spite of the election of judges. That is the way the fact is. Now, the advocates for an elective judiciary come in and modestly appropriate to their false theory all the credit that is due to the limited tenure; and the chairman of the Judiciary Committee deliberately proposes to abolish that limited tenure and get back as near as he can to the old life-tenure; and the next step will be to get back to the life-tenure.

Sir, I am opposed to all such reforms as that. I recognize the improvement of the judicial establishment of Pennsylvania under the limited tenure adopted by the Convention of 1837. It is to that, and not to the elective judiciary, that those improvements are to be attributed; and gentlemen reasoned very loosely when, in this late debate, they claimed for the election of judges all the merit that had resulted from that principle of limiting their tenure.

I trust that the number of judges will not be increased. It is adequate for the discharge of all those appropriate duties of the supreme bench now. I believe that every judge upon that bench thinks and says that the number is adequate. I know some of them do. I believe it to be adequate. Of course they cannot do all the business that comes up to them, nor can seven judges do it all, nor nine, nor ninety, because they must all sit together, unless the proposition of my friend from Allegheny (Mr. S. A. Purviance) shall prevail, to divide them up into committees. If they are to be a unit, then five judges can hear as many causes in a day as any greater number of judges.

There is no reform in adding two judges to that bench. What you want is an intermediate court that shall sift out the chaff that now goes up to the Supreme Court and occupies their time in the argument of counsel as well as in the deliberations of the court. That is what you want. With that, five judges are better than any larger number that you can name. But the Convention has voted down all propositions for an intermediate court. Then let us have things as they are. If you will not have an intermedi-

ate court, leave the five judges to struggle on as best they may through this impenetrable mass of business that remains indefinitely in their respective districts. You will not accomplish that business by increasing the number of judges, nor will you accomplish any reform by increasing the tenure of their office.

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

Mr. WOODWARD. Yes, sir.

Mr. FUNCK. I should much like to know how the limited tenure improves the system. I know the gentleman has had great experience and I shall be glad to be enlightened on that point.

Mr. WOODWARD. I would refer the delegate to his own experience for the last twenty years, and to the experience of every lawyer in this body. When the judges who were elected under the amendment of 1850 came into the Supreme court, they found a vast amount of *remnants* in all the districts. I do not know what the whole aggregate was, but I know it was very large.

They said that if they understood what the people of Pennsylvania meant by putting them on the bench for fifteen years, it was to clear that docket. They said that among themselves, and they went to work to do that thing, and they did it, because they were elected for fifteen years. If they had been elected for life it would not have been done. They worked vigorously, and they worked successfully, and within five years after that new judiciary came in, there was not, so far as I know, a case in Pennsylvania brought up by writ of error or appeal that had not an opportunity to be heard in the year in which it was brought up. Of course, there is always a quantity of cases, more or less, lying over, because counsel will agree upon the continuance of some cases from term to term; they are not ready on either side; and such cases go over. But, sir, I think I speak with absolute accuracy (and there is Judge Black to correct me if I do not) when I say that within five years after the new judicial establishment came in upon the limited tenure, there was not a case in Pennsylvania that was continued for the want of time on the part of the judges to hear it, but every case had an opportunity to be heard within the year in which it was brought.

I do not say that that court was any more efficient than its successors have been, because I have learned from the debates here that the tendency of the elec-

tive principle is to improve the judiciary all the while, and, therefore, the present bench ought to be a great deal more efficient than the first bench was, and we shall go on indefinitely improving; but I state that fact in justice to the truth of our legal history, and for the purpose of answering the question of my friend how the limited tenure operated to the benefit of the judiciary. It operated to the benefit of the people of Pennsylvania in that it cleared the docket and opened the way for every case to be heard within the year in which it was brought.

Mr. DARLINGTON. Mr. Chairman: I move to amend the amendment presented by the gentleman from Philadelphia, by striking out all after the word "such," in the seventeenth line to the end of the paragraph, and inserting these words, "times and places as may be prescribed by law." It will then read:

"Shall sit in banc for the hearing of causes that come up by writs of error or appeal, at such times and places as may be prescribed by law."

I will state the purpose I have in view. The amendment of the gentleman from Philadelphia proposes that the Supreme Court shall sit at one place, to be fixed by the Legislature, and that the judges shall reside at that place. I propose to leave it as it now is in fact, by allowing the court to sit at such times and places as the Legislature shall prescribe, leaving out all about their adjourned sessions or living at the same place.

Mr. ARMSTRONG. I desire to make a word of explanation. If the gentleman from Philadelphia (Mr. Woodward) had desired to raise the question of the number of judges, it would have been very readily done by moving to strike out the word "seven," in the first line of the section, and insert "five," and thus have raised the question directly. But he now proposes a section which is open precisely to the same objection which was stated more fully in regard to the second section, which he moved as an amendment. I call the attention of the committee to the fact that that part of the section which he now proposes to insert, the fifteen years term, has already been voted down, and twenty-one years inserted. Then, again, that part of it which provides for the salary of the judges, gentlemen will find already provided for in the report, on page ten, in section twenty-three. So also that part of it which prescribes the jurisdiction of the court, they will find on page three, para-

graph six, and so I might go through. There is nothing in this section proposed by the gentleman from Philadelphia but what will be found in its appropriate place in the report of the committee. I therefore think it would be well to vote it down. If the gentleman has any specific amendments to suggest to the section under consideration let them be voted upon on their merits.

The amendment of Mr. Darlington to the amendment of Mr. Woodward was rejected.

Mr. BUCKALEW. I move to amend the amendment, by striking out "five" and inserting "seven." I desire simply to say, without detaining the Convention, that there are some clauses in the amendment of the gentleman from Philadelphia which I am decidedly in favor of, and I want the amendment put in such form that I can vote for it. Being in favor of it, I want it put in such a shape that I can give my vote for it.

The difficulty with the former amendment, which the member from Philadelphia presented, was that it combined some half a dozen propositions. I suppose somebody in the Convention was in favor of some one of the series, but a majority were not in favor of the whole of them combined; and therefore the amendment received but a very small support; and now the amendment which he proposes here, although in my judgment it is preferable to the section which it is offered to supercede in several important particulars, yet it contains this feature of five judges instead of seven. I believe the general demand of the legal profession in the State and the expectation of the people both look to an increase in the number of the judges of the Supreme Court, and if my amendment shall be adopted I hope the Convention will adjourn, and in the morning we shall have a full and intelligent vote between the two systems—for they are systems—presented by the section and by this amendment.

Mr. ARMSTRONG. Mr. Chairman: The section, as it stands reported from the committee, is entirely in accord with the desires of the gentleman from Columbia, and does provide for seven judges. My objection to this amendment is not that its several provisions are not wise, for the committee have reported many of them in, I think, more appropriate places. For instance, when we come to define the jurisdiction of the Supreme Court, we define it distinctly by itself, that it may not

be mixed up with anything else; and so, when we come to the question of salaries, you will find that by itself. For that reason I think it is not advisable to adopt this section, and I hope there will be no delay in taking the vote upon it.

Mr. BUCKALEW. I want to make one response. I confine myself to the single question which my amendment raises: Is the Convention in favor of five or seven judges? I want nothing else determined by this vote.

The CHAIRMAN. The question is on the amendment of the gentleman from Columbia (Mr. Buckalew) to the amendment of the gentleman from Philadelphia, (Mr. Woodward,) to strike out "five" and insert "seven."

The amendment to the amendment was agreed to.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Philadelphia, as amended.

Mr. BUCKALEW. This question of the tenure of judges, whether it shall be fourteen, fifteen, sixteen, twenty or twenty-one years, has not been debated or deliberately passed upon by this Convention; and confessedly it is a very large and important question, and I protest against its being decided here, at nearly six o'clock in the afternoon, when everybody is fatigued and when no attention can be bestowed upon it. No particular resistance was made to the gentleman from Lycoming (Mr. Armstrong) fixing his section just as he desired it, and there was no reason for a contest at that stage, because we still could have an opportunity to pass upon the question between his section and some more perfect one at a subsequent stage. Now, the gentleman from Philadelphia (Mr. Woodward) presents us a section in which we have this contrast fairly before us, and I object to determining it to-night. I move, therefore, that the committee rise, report progress, and ask leave to sit again.

The CHAIRMAN. Before putting the question on that motion, the Chair desires to make one observation in justice to himself. A few moments ago when the Chair appeared to rule out the amendment offered by the gentleman from Philadelphia, (Mr. Woodward,) it was owing to a misapprehension of the purpose of the delegate from Philadelphia. There is no clearer rule than that you cannot strike out that which has been inserted, but there is also no clearer rule than that you can strike out that which has been



inserted in connection with other portions of the section. The Chair did not intend to decide otherwise. He merely misapprehended the purpose of the delegate from Philadelphia.

The question is on the motion of the gentleman from Columbia, (Mr. Buckalew,) 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 reported by the Committee on the Judiciary, and had instructed him to report progress and ask leave to sit again.

Leave was granted to the committee of the whole to sit to-morrow.

Mr. LILLY. I move that the House adjourn.

The motion was agreed to, and (at five o'clock and thirty minutes P. M.) the Convention adjourned.

## NINETY-FIRST DAY.

FRIDAY, May 2, 1873.

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

Prayer by Rev. Jas. W. Curry.

The Journal of yesterday was read and approved.

## PETITIONS AND MEMORIALS.

Mr. BIGLER presented resolutions adopted by the Bar Association of Clearfield county, opposing the circuit court system, favoring the plan proposed by Mr. Kaine's minority report from the Judiciary Committee, and suggesting various modifications in the judicial establishment in regard to common pleas judges, retiring them on two-thirds pay for life after having ceased to hold the office, and extending the term of the supreme judges to twenty-one years; which were read and ordered to lie on the table and be printed.

Mr. GUTHRIE, (at the request of Mr. Joseph Baily, detained from his seat by sickness,) presented the petition of one hundred and fifty citizens of Susquehanna county, and the petition of twenty-five citizens of Hellertown, Northampton county, praying for an acknowledgment of Almighty God and the christian religion in the Constitution of the State, which were laid on the table.

## THE HOPKINS' MEMORIAL.

Mr. KAINE. I ask leave to make a short statement at this time.

Leave was granted.

Mr. KAINE. A number of members of the Convention have spoken to me in regard to the memorial that has been published of the late Colonel William Hopkins. It seems there have not been enough copies to furnish the members with a sufficient number; some members who have been absent have received none, and there are none to supply them. Several gentlemen have spoken to me on the subject, and this morning I addressed a note to the Messrs. Lippincott, who published the memorial, asking if they

had the type still standing and what they would charge for five hundred additional copies. They say:

"In reply to your note of this morning we have to advise you that the type matter of the Hopkins' memorial has been distributed. As an additional five hundred copies would be a re-print edition, and as we have the stamps on hand, we could make five hundred copies for about two hundred and seventy-five dollars, and would be happy to execute an order to that effect.

(Signed)

J. B. LIPPINCOTT & CO.

The House will remember that the plates for the engraving in those already printed was furnished to the Messrs. Lippincott by Sartain. The engraving is on hand, of course, and the portrait will cost but a cent and a-half for each copy. The portraits for five hundred copies will cost but seven dollars and fifty cents, and if the Lippincotts will print and bind the work, as they will, in the same form as those already printed, it will cost the Convention about two hundred and seventy-two dollars and fifty cents for five hundred additional copies. In view of that, I offer the following resolution, if it meets the approbation of the Convention:

*Resolved*, That the Committee on Printing are hereby directed to procure five hundred additional copies of the memorial of Colonel William Hopkins, for the use of the members.

On the question of ordering the resolution to a second reading, a division was called for, which resulted, ayes, thirty-four; noes, thirty-four. So the resolution was not ordered to second reading.

## SALARIES OF MEMBERS.

Mr. BAER. I offer the following resolution:

WHEREAS, The Legislature has repealed that portion of the act providing for calling a Convention to amend the Constitution, which fixed the salary to be paid its members, and has appropriated

the gross sum of five hundred thousand dollars for salaries and other expenses of the Convention, therefore,

*Be it resolved*, That the salaries of the members of the Convention are hereby fixed at — and mileage at the rate of ten cents per mile circular, for not more than two sessions; *Provided*, That the salary of the President shall be double that of the other members, and that the Committee on Accounts be instructed to report a proposition fixing the pay of the officers for the consideration of the Convention.

Mr. H. G. SMITH. I move you, sir, that the resolution be laid on the table.

The PRESIDENT. It will be laid on the table under the rule.

BINDING OF JOURNAL AND DEBATES.

Mr. NEWLIN. I am directed by the Committee on Printing to report the following resolution:

*Resolved*, That the printer, B. Singerly, bind the Journal and Debates of the Convention in half-binding, leather backs, and tips, with paper sides and gilt labels, and forward to the residence of each member, by express, thirty copies of each volume, as soon as they are bound, and that each member shall receipt therefor to the printer, which receipt shall be his voucher; the expense of boxing and expressing to be paid by the Convention.

The resolution was ordered to a second reading, and was read the second time.

Mr. J. PRICE WETHERILL. Before that resolution, as presented by the Committee on Printing, is passed, I should like to hear some explanation from him in regard to the number; whether he conceives thirty to be the proper number or not. It seems to me that thirty copies to each member of the Convention would be rather in excess of the necessity of the case. I think twenty probably would be enough. I should like to know from the chairman of the committee how he arrived at that number and the reason for it.

Mr. NEWLIN. Thirty copies each would still leave over five hundred extra copies to be distributed to public libraries and other places under the orders of the Convention, and the thirty copies are not only designed for the use of the members, but so that the members can supply their constituents and any libraries or other public institutions which are not taken care of out of the additional five hundred. I think it is the proper number; it is the

edition that was ordered by the House when the contract was first made with the printer, and if less than thirty copies are given to each member, there will be a large excess which will have to be disposed of in detail by the Convention.

The resolution was adopted.

THE JUDICIAL SYSTEM.

Mr. LAMBERTON. I move that the Convention go into committee of the whole on 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 pending question is on the amendment of the gentleman from Philadelphia, (Mr. Woodward,) to strike out the second section of the committee's report and insert the third section of the minority report presented by himself. The gentleman from Lycoming (Mr. Armstrong) has the floor.

Mr. STANTON. Is it the third section?

The CHAIRMAN. The second section of the report is before the committee. The amendment is to strike that out and insert what is found as the third section in the minority report, submitted by the gentleman from Philadelphia (Mr. Woodward.)

Mr. ARMSTRONG. By reason of the amendments which were put upon the section yesterday, one striking out the circuit court, and another in relation to the appointment of supreme judges, some modifications have become necessary. I have re-drafted the section for the purpose of putting it into, I think, a little better and more concise language. I ask that it be read.

The CHAIRMAN. It will be read for information.

Mr. ARMSTRONG. The committee will observe that it is the same section as was before the committee yesterday, except transposed in some slight particulars, not changing the sense at all.

The CLERK read as follows:

The Supreme Court shall consist of seven judges, who shall be elected by the qualified voters of the State at large. They shall hold their offices for the term of twenty-one years, if they shall so long behave themselves well, but shall not be eligible to re-election. 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. The judges of the Supreme Court who shall be in office when this Constitution takes effect shall continue until their commissions shall severally expire. Two judges in addition to the number now composing said court shall be elected at the first general election after this Constitution shall be adopted, whose term of office shall begin on the — day of — 18—.

The CHAIRMAN. This modification of the original section can only be adopted by unanimous consent. Is there any objection?

Mr. COCHRAN. Before that question is put I desire to inquire of the gentleman from Lycoming whether or not he has omitted the term of office.

Mr. ARMSTRONG. No, sir. The term is twenty-one years. This amendment is a mere modification in point of expression; that is, it is the same in intent as the original section that was yesterday before the Convention. The modification is merely in the language.

The CHAIRMAN. This modification is accepted by general consent. It is a modification of the second section of the article reported by the Committee on the Judiciary, now before the committee of the whole, and is submitted, as an amendment, by the gentleman from Lycoming. Is there objection to substituting it for the original section? The Chair hears none, and the section is so modified. The question now is on the amendment of the gentleman from Philadelphia (Mr. Woodward.)

Mr. LAMBERTON. Mr. Chairman: I move to amend the amendment, by inserting after the word "seven," in the first sentence of the amendment, the words "each of whom shall be elected in a district established for the purpose."

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin, (Mr. Lamberton,) to the amendment of the gentleman from Philadelphia (Mr. Woodward.)

Mr. LAMBERTON. Mr. Chairman: It is proper that some explanation should be made of the amendment which I have just offered. Immediately after the word "seven," in the first sentence of the amendment now pending, it is proposed to insert the words contained in the amendment just sent to the Clerk's desk. In plain terms, instead of having our supreme judges elected by the State at large, its design is to divide the State into seven districts, in each of which a supreme

judge shall be elected. The Convention has decided, by a large majority, that to the judgment and discrimination of the people is to be left the selection of the judiciary, rather than to a partisan Governor, although he may be backed by the advice and consent of the Senate. It was demonstrated, during the discussion, that it is the earnest and the unanimous desire of the members of this Convention to lift our supreme judges above the region of partisan politics; to select them because of their ability and integrity, and to render them independent of executive, legislative, and all improper influence.

During the course of the argument there were two objections made against the election of our supreme judges, of peculiar force.

The first was, that when the election of a supreme judge occurs at the same time as other State officers, there is too much danger that, in the heat of party excitement, we shall forget the dignity and importance of the office and vote our ticket as nominated, so that the candidate is either swept in by party success or overborne by party defeat, without due consideration of his merits. There is a clear and specific remedy for this evil; the election of our judges should be held at some other time than when the general election takes place. Thus will you get rid of the objection which I have just mentioned.

But, the next objection is one also of weight. Those of us who have had experience in nominating conventions understand and realize not only its apathy, but its force. When a general nominating convention meets the practice is, if there be a Governor, an Auditor General, and also a supreme judge to be nominated, for the delegates to canvass among the friends of the respective candidates to make favor for their own. Votes for one candidate are exchanged or traded for votes for another. This evil, urged as I have said before this committee, was predicted eighty-five years ago by Mr. Hamilton in his argument upon the danger of committing to any assembly of men the appointment of our officers. In the seventy-sixth number of *The Federalist*, reasoning against such a method of appointment, and in favor of the provision in the Constitution of the United States conferring upon the President the power, he made the prophecy fulfilled every year in nominating conventions:

"Hence in every exercise of the power of appointing to office by an assembly of

men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may, at any time, happen to be made under such circumstances will, of course, be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight. In the first, the qualifications best adapted to uniting the suffrages of the party will be more considered than those which fit the person for the station. In the last, the coalition will commonly turn upon some interested equivalent: 'Give us the man we wish for this office, and you shall have the one you wish for that.' 'This will be the usual condition of the bargain. And it will rarely happen that the advancement of the public service will be the primary object either of party victories or of party negotiations.'

The order in which candidates are nominated at these conventions is, first, the Governor, then the Auditor General, then the supreme judge. As has been pointed out, and as we know to be the fact, it is the law and custom of party, because the exigency of party demands it, that when a candidate for the office of Governor is chosen from the east, the Auditor General will be from the north or the west, and then you are remitted to some other part of the State for the candidate for the supreme bench.

Whilst every gentleman upon this floor, who has either personal acquaintance with our supreme judges or has practiced before them, will bear witness that that body is composed of men alike eminent for their purity, their worth, and their ability as jurists, yet, by the custom I have mentioned as obtaining in conventions there is no member of the Supreme Court residing within the vast sweep of territory from the eastern line of the county of Montgomery to the Allegheny river, on the west, and to the county of Bradford, on the north. In the south-eastern corner of our State lies the city of Philadelphia. It gives us two of our supreme judges. Off from the extreme north, from the county of Bradford, comes another, and then from the extreme west, from Allegheny and Beaver, come the other two of our judges. I am sure that it is no disparagement to the distinguished ability of these gentlemen which commanded the

confidence and support of their friends, that they were selected, in part, because of the localities in which they resided.

The remedy to cure the evil of bartering votes in our conventions is a plain, simple and practicable one. I would create an intermediate court. I would have the State divided into seven districts of contiguous territory and, as nearly as possible, equal in population; and in each one of those districts, so constituted, I would have an election at some other time than when the general election occurs. My reasons, without elaboration, are these:

*First.* You would have purity of election. The complaint has been made that our elections, in some parts of the Commonwealth, have been debauched. There would be no inducement to achieve party success by resorting to fraud in the election of a judge. It is not such a political office as would call forth the wicked ingenuity of bad men to thwart the will of the people.

*Second.* It has been said—and with what truth I am not here to declare, because I do not wish to malign any portion of the Commonwealth—that there is one part of this great State in which a majority can readily be manufactured; in which, by a false return or by a false count, a majority of such magnitude can be rolled up in defiance of the popular will and the popular vote, as to overbear the majority cast in the other parts of the State. If districts were established this could not occur.

*Third.* The most unscrupulous partisan majority, when it came to apportion our State, could not, by possibility, so gerrymander it as to create the districts thus to be established all of the same political complexion. Hence you would secure upon the supreme bench representatives of different shades of party belief. The Supreme Court could not be composed, under such a system, of judges belonging to the same party.

*Fourth.* It will have this effect: That if there is any jurist of State reputation whom the people think should be placed upon the supreme bench, residing in a district opposed to him politically, he could be chosen by the electors of another district, the majority of whom agreed with him.

*Fifth.* And this is a fact well known to gentlemen upon this floor: In every district so to be constituted there are lawyers fitted by thought, culture, ability, knowledge of the law, and purity of character,

to go upon the supreme bench, who cannot be nominated in a general convention, because they are not known throughout the State, not having seen proper to enter into the arena of politics, and not having occupied seats in the national or the State Legislature. They are lawyers, not politicians. Their reputations are local. To them my amendment would render seats in the Supreme Court attainable.

*Sixth.* You would secure not only the best mind of the profession, but also men learned in the various branches of the law as applied in practice to the diverse interests existing throughout the Commonwealth. In the letter of Mr. Justice Agnew to the members of the bar of Pittsburgh, a letter as creditable to the judge who wrote it as it was just and complimentary to Chief Justice Thompson, of whom it was written, in speaking of his loss to the bench he enumerated several branches of legal learning in which the Chief Justice was peculiarly versed. He spoke of what he denominated regional law, the jurisprudence relating to that extent of country described in the act of 1792, lying north and west of the Ohio and Allegheny rivers and the Conewango creek; of rural law, the law of roads, townships, bridges, the poor, &c., and of other divisions which I need not mention. All of this learning we need, and it can be obtained by choosing our judges from different sections of the Commonwealth.

Elect supreme judges in the manner which the amendment indicated, and you will have gentlemen not only of general legal attainments and knowledge, but also skilled in the application of the principles of the law to the various interests peculiar to their own communities.

And lastly, the conventions which would be called to nominate the candidates for judicial honors would be composed, if not chiefly of members of the bar, certainly of those best acquainted with the reputation and worth of those who would be placed in nomination. It has been said that a proposition would be made, if the power to appoint judges were given to the Governor, it should be upon the recommendation of two-thirds of the members of the bar, in the various districts. This would not be feasible; but, by the plan which I suggest, you would have the delegates meeting in the different nominating conventions composed of those whose sole interest would be to select the purest and best men, and who would best know the standing, professionally and per-

sonally, of those whose names were presented for preferment.

For these reasons, thus briefly given, I submit the amendment to the consideration and judgment of the Convention.

Mr. MACCONNELL. In the early history of this Convention I had the honor to submit a resolution, which will be found on the twenty-ninth page of the suggestions presented to the Convention, and which reads as follows:

*"Resolved,* That the Judiciary Committee report an amendment requiring the Legislature to divide the State into as many judicial circuits as there may be judges at the time in the Supreme Court; requiring the legal voters of each circuit to elect one judge of said court," &c.

It is substantially the proposition now offered by the gentleman from Dauphin (Mr. Lamberton.) I was induced to offer that resolution for the reasons which have been so well expressed by the gentleman; in the first place, because it would secure a representation in the Supreme Court of both political parties, as it was not at all probable that a majority in all the circuits or districts, or whatever you might call them, would be on the side of the same political party. I think it is desirable; I think the interests of the State would be subserved, by having the Supreme Court composed of representatives of the various political parties, and not to consist wholly of members of the same party. That is one reason that induced me to offer the proposition.

Another was that the judges of the Supreme Court shall be taken from the different parts of the State, so that the different parts should be fairly represented upon the supreme branch. The gentleman from Dauphin who offers this amendment now has referred to the fact that there are particular branches of the law that apply more particularly to certain parts of the State than to other parts. The question of land titles, for instance, in the west and in the north; mercantile questions in the east, in the city of Philadelphia, and other questions in different parts of the State.

There is great truth in the remark of Mr. Justice Agnew in regard to the questions of land law. If I recollect the remark in his letter, it was that Chief Justice Thompson and himself were the only judges on the supreme bench who had had much experience in those questions that arise in the west in ejectment cases, and that if Judge Thompson

was not re-elected there would be only one judge on the bench who had experience in that branch of the law. I think gentlemen must see that there is great reason in those remarks of Judge Agnew, and that it is desirable that we should have on the bench judges from the various sections of the State, and thereby secure a representation on the bench who are best acquainted with the various branches of the law that arise in the different parts of the State. Those are some of the reasons that induce me to favor this amendment. I might go on and specify others; but I would only be taking up the time of the Convention in repeating what has been said so well and so forcibly presented by the gentleman from Dauphin. I shall therefore content myself with the remarks I have already made. I am heartily in favor of the amendment.

MR. ARMSTRONG. Mr. Chairman: In accordance with the resolution to which the gentleman from Allegheny has referred, the Committee on Judiciary did take this matter into most careful consideration, as they were instructed to do by the resolution. After looking at the question in all its aspects, and canvassing it most carefully, they concluded that it was not a judicious amendment.

I will very briefly state to the Convention some of the difficulties which would arise under the proposed amendment. In the first place, if the State is to be divided into election districts according to population, it would give to Philadelphia and Pittsburg and their surroundings a very unreasonable proportion of judges which, under such a Constitutional amendment, they could justly claim. It is easier to manipulate the nominations for a small district than it is for the entire State. Again, as all the judges, when elected, are to exercise jurisdiction over the State at large, the entire body of the people should have a right to participate in their nominations. Otherwise, a mere fraction comparatively, one section of the State, might impose upon the State at large a judge whom they had no part in nominating, but must adopt by election, *ex necessitate*.

As to the distribution of judges according to the various interests of the State, I think it is quite illusory. There are certainly many more than seven vast interests in the State, which could be enumerated, and each of which could, with equal propriety, demand recognition in the court. The commercial law, which probably em-

braces two-thirds of the entire business of the State, has never failed of full representation, and is now appropriately represented by the judges elected from the centres of population and business, as Philadelphia and Pittsburg. Land law has in like manner been always fairly represented on the bench and has never been without representation.

Judge Thompson, to whom reference has been made, derived all his judicial experience upon his election to the bench in the north-western portion of the State. He became eminent in commercial law and equally so in land law; but there was no especial department of law to which his attention had been especially confined before he became a member of the bench, and like all other apt and able judges he learned by his experience upon the bench to deal with comprehensive power with all questions which came under his judicial cognizance, and thus became proficient in all departments of the law. As the bench is now organized, Judge Agnew is pre-eminent for his familiarity with land titles and land law. So also is Judge Mercur. So I might go over the list of judges as they have been in the State for many years. All branches of the substantial interests of the State have been fairly represented.

Again, if the State be divided into districts, it belittles the court and detracts in a large degree from the dignity which ought to surround its judges. They should feel that they are officers of the State and not the representatives of a district.

I might at much greater length elaborate these and other suggestions, but the Judiciary Committee I believe, on this point, if my recollection serves me, was entirely unanimous, and I do not think it is worth while to detain this body with a more elaborate discussion of the question.

MR. DODD. I simply rise for the purpose of saying that I have been convinced, by the argument of the gentleman from Dauphin, (Mr. Lamberton,) that this proposition has in it a great deal of merit. The answer of the gentleman from Lycoming (Mr. Armstrong) was to but one of the arguments of the mover of this proposition. Another of his arguments, to wit, that by dividing the State into districts, and electing the supreme judges in the several districts instead of at large, you would thereby prevent the Supreme Court from being composed entirely of judges of one political complexion, and would also admit of holding district con-

ventions, which should largely, be composed of members of the legal profession in such districts, and thereby prevent merely political or partisan nominations, prevent the formation of rings and the mode of nomination by merely trading off one district against another, or one candidate for another—"you help me and I'll help you." I say the argument of the gentleman from Dauphin, on that particular point, strikes me as very forcible; and I have risen simply for the purpose of saying that he has convinced me, at least, for I had not thought of the matter before, that it is a very important provision, and I shall gladly give his amendment my support.

MR. BAER. Mr. Chairman: I heartily concur in all that has been said by the gentleman from Dauphin and the gentleman from Venango. I believe that the reform indicated by the amendment offered by the gentleman from Dauphin is in the right direction. It will enable judges of the Supreme Court to be selected outside of political rings or political machinery, independent of the great combinations which generally arise, from the fact that they are nominated in State nominating conventions. The court certainly could not suffer by the character of men who would be placed there under this system, because it is very likely that the people of each district will be better acquainted with the particular person presented to them than the people of the whole State would be; and that was one of the very arguments used here when the question of the appointive or elective judiciary was under discussion yesterday.

If it is necessary to bring the candidate nearer home to the people, in order that the people may know his character and qualifications, then this is a step in the right direction, because, as I said before, the people are more likely to know more about the man if he is taken from a circumscribed district than if he is taken from the entire State.

Besides, this will enable that court to be so constructed that no one location, no one district of the State where a great mass of people live, will be able to select the judges of the Supreme Court for the entire State. As it is now, the two commercial marts, Pittsburg and Philadelphia, might, by a combination, for all time, elect the judges. I do not know that we should suffer very greatly if they did; they have got a sufficient quantity of able men to fill the bench; but it is well known

that in order to be a good judge a man must be more than a mere lawyer. I believe that the greatest judge is the man who, with his legal learning, also combines a thorough knowledge of human nature; and I believe that a court composed of seven men, taken from seven different localities in the State, would combine more knowledge of human nature than if you were to take them, say, from this city, where all the business affairs run in one channel, while in the country they run in another. You cannot expect to find professional men in the interior so conversant with commercial law as professional men in the city, I admit; nor are you likely to find them so conversant with land law in the city as you will find them in the interior. A great many small cases arise in the interior and are considered there, because there are no large ones, that do not arise in the city, and the judges in the interior come more in contact with the people, and I think they know more of the common and ordinary affairs of life than those of the city who, learned and intelligent as they are, from their associations and from the establishment of a class which, say what you will, nevertheless does exist in the city, are kept from mixing and commingling with the common people; and it is the common people especially, and their business habits and life that should be known to some extent by the judges who are to decide upon their lives, liberty and property. I consider it eminently essential to the ability of the judiciary that the judges should be selected in the manner indicated or something akin to it, and as nothing better has been offered I shall heartily vote for the proposition of the gentleman from Dauphin.

MR. CURTIN. Mr. Chairman: I was much gratified when the delegate from Dauphin offered this amendment to the section as reported by the committee; and I must conceive, notwithstanding the objections of the intelligent and learned chairman of that committee, that the reasons offered by the delegate from Dauphin should control the action of this body. Perfectly satisfied in the main with the report of the committee, I have given my vote steadily for either the report of the committee or the substitute offered by the delegate from Philadelphia; but as in the presence of so large a vote of this Convention we must abandon all hope of reaching an independent tenure to the judiciary by appoint-



ment, we have to take the best we can possibly get, and first to accept the tenure for twenty-one years, carrying into the judiciary with it the principle we have adopted in regard to the executive departments of ineligibility for the Auditor General, the State Treasurer and the Governor. The chairman of the committee, as well as a majority of the committee, having the settled conviction that judges should be appointed, have not had his or their attention turned to the sensible amendment proposed by the delegate from Dauphin, which is to divide the State into districts, allowing each district to elect a judge of the Supreme Court.

Mr. Chairman, it has been very properly said by the delegate from Dauphin that the nomination of a supreme judge by a State convention is a secondary affair, and when you nominate the Auditor General or State Treasurer with the supreme judge, the political offices of the Commonwealth are filled, first by the nominating convention, and the nomination of supreme judge depends on the best bargain that a candidate's friends can make with the majority of the convention nominating the Governor, Auditor General or State Treasurer; and thus it is that the nominations for judges of the Supreme Court generally fall in the centres of trade and large population, and thus you account for the fact that you have two judges from Philadelphia and two from the vicinity of Allegheny county; because those localities have more delegates in a convention to give on a trade than the sparsely settled districts of the country.

Mr. Chairman: I have no doubt of the purity of the judiciary of Pennsylvania, and if any man here had doubts of the purity of our judiciary this would be the wrong place to ventilate them. I accept it, therefore, as settled, that we have an eminently pure and learned judiciary in Pennsylvania, and in a Convention of one hundred and thirty-three members, with ninety-three members in active practice, it is not likely that we should hear an adverse opinion of the integrity, fidelity and learning of the judges before whom their cases are to be tried. I accept it, therefore, as settled, that the opinion generally expressed in this Convention of the integrity of the judiciary of Pennsylvania is well founded. Now, let us, so far as we can, preserve it, and not throw the nomination of the judges of our Supreme Court into the uncertainty of the political

mill which assembles once a year at the State Capital to nominate candidates for offices, where the pay is higher, the honor almost equal, and the patronage much larger. But if you elect seven, and, according to the amendment of the delegate from Dauphin, divide the State into districts, as he has truly said, you have the sentiment and the feeling of the district represented.

I will add but one idea to the forcible speech of the delegate in advocating his amendment, and that is, that you would excite a rivalry in the seven districts of the State, and each would try to put upon the bench the most learned, intelligent and able lawyer in his district. I do most heartily concur in the amendment, and shall give it my vote.

Mr. DARLINGTON. Mr. Chairman: I have listened attentively to the arguments that have been presented in favor of this proposition without being able to bring my mind to the conclusion that it would be judicious to adopt it. The notion that a judge, located in a particular portion of the State, is to be presumed better qualified to discharge the duties of his high office, by reason of some knowledge which he may have acquired in the practice of his profession, in cases that peculiarly arise in his section of the State, I think to be unsound. No man should be selected for that position, by any party, who is not competent to grapple with, and dispose of, every question which may arise in any portion of the State. I repudiate the notion that you must have a gentleman from the city of Philadelphia for the knowledge of commercial law, or a gentleman from the western part of the State for his knowledge of land titles and land laws.

To what does that notion tend? Simply this: That in the hearing and decision of causes before the Supreme Court, you are to rely upon less than the whole number for knowledge and learning upon the particular question that may be presented. We are not willing to trust to any one man upon the bench for his knowledge of commercial law; nor am I willing to trust his influence with his fellow-members of the bench for such knowledge as is necessary for them to possess, in order to a proper hearing and decision upon the questions which may arise in the administration of commercial law; and this remark is applicable to all cases that can possibly arise, whether under the law peculiar to the district in which land titles

are more frequently occurring than in others, or questions arising in the oil region, where bills of equity are required to be understood, or questions arising in the coal region, or in any other region of the State. It is necessary that every man upon that bench should either be, himself, acquainted with the subject, generally, or able, readily, to make himself acquainted with it, when he comes to hear and decide it.

Now, what will be the effect of dividing the State into districts? It will be to say, however good an individual may be, however superior he may be to all others that may be presented, we are precluded from choosing him for a position upon the bench, by geographical lines. You cannot take this man, the best in the State for the position; acknowledged by all the bar to be the best, possessed of the best qualities and the greatest learning—you cannot take him, when a vacancy occurs, because he does not happen to reside in the proper district. Thus you preclude the people at large from electing whom they will, by saying that he must be taken from a particular district. Gentlemen shake their heads; but if that is not the meaning of it, why district the State?

Mr. BREBE. Does the gentleman understand that the amendment includes the idea of taking the nominee from the particular district in which he is to be elected?

Mr. DARLINGTON. I suppose it does.

Mr. BREBE. I do not so understand it.

Mr. LAMBERTON. Not at all.

Mr. DARLINGTON. I understand what the gentlemen say.

Mr. BREBE. The selections are made from the State, but the election is by the district.

Mr. DARLINGTON. I understand what the gentlemen say perfectly well; but nevertheless the result would be the same. If a district is called upon to elect a judge, the rest of the State has no part in it, and, as a necessary consequence, he would be selected from the district where his electors reside. That would be the result. When a district of the State, one of seven, or five, or whatever number you please, has cast upon it the sole duty, regardless of what all the rest of the State may think, of electing a judge for the Supreme Court, it is in vain to tell me that it will not select him from its own midst; but if that people will not select him from their own district, I ask where is the propriety of precluding

others from participating in the choice? If the western district chooses to select a gentleman from Philadelphia, why not let Philadelphia and all the surrounding region of the State besides the west participate also in that choice, because it might be that the western district might select a man in Philadelphia who would not be acceptable to the rest of the State.

Now, what is the argument for allowing the election to be by districts? The peculiar knowledge gentlemen have of the members of the bar residing within their district. Are gentlemen sincere when they tell me that this contemplates the peculiar knowledge of gentlemen residing not in their district, that is known to them alone, and not to others; that they are better qualified to judge of the capacity of a man in another part of the State for the office of supreme judge than those who live around him? Where is the reason for committing to a district of the State the choice of a man from another part of the State, of whom it will not be pretended that they have any superior knowledge, over those who live around that man? No, this is not the idea. You may tell me so; you may argue here, and you may proclaim from the house-tops that you do not mean to confine the selection to the district; but if so, the foundation of this amendment is not true in point of fact; it will not be found to be true. They will be selected from the district, because of the reasons which have been advanced; the people there better know the men within the district than they know those out of the district. Then is it not better in selecting officers who are State officers emphatically, who are not district officers, who are judges over the whole State, that the whole State should be allowed to participate in the choice? Will it not be done as well?

How is the result to be accomplished? Only by party machinery we admit. We are divided for all practical purposes into two parties, and we always shall be. Each party elects its representatives to discharge a duty which it can no otherwise discharge, by placing in nomination its best man or him who is supposed to be its best man; the other party does the same, places before the community its best man; and then you and I have the choice between those two best men of the whole State. I want to have a choice in voting for them as well as in selecting them; and in that way (for it is the only practicable

way) we arrive at who shall be the man best qualified under all circumstances to enjoy the honors and to discharge the duties of the high office of judge of the Supreme Court.

For these reasons I am decidedly opposed to any districting of the State for the purpose of selecting men, whether from their own districts or from others; and as to selecting from others, I think I see that it is a myth. I am opposed to any other plan than selecting from the whole State, and electing by the people of the whole State.

Mr. J. PRICE WETHERILL. Mr. Chairman: I did not intend to say a word upon the article on the judiciary, for the reason that I consider that that matter belonged purely to the profession, and as a layman, not a lawyer, I thought it would be an unauthorized interference for me to say anything upon a subject about which perhaps I know but little. But on this question as to the election of judges of the Supreme Court by districts you must work it out in its practical results, and fully understand it, and it does seem to me that the gentleman from Dauphin (Mr. Lamberton) has overlooked one point in this discussion. There is a great deal of force in what he says. I admit that the best interests of this State require representation; but does he secure it by the method which he has just presented? With the map before me, I have gone over this matter with this result: The population of the State is 3,500,000; if we were to adopt the amendment proposed we shall have seven judges of the Supreme Court, and the quota based upon a population of 500,000 to each judge; all will admit that. It is right that we should make population the basis of representation; no other method I deem would be admissible, and I do not suppose we can fairly arrive at that proper result in any other way. Thus each district out of which a judge of the Supreme Court should be elected must contain a population of five hundred thousand, no more, no less. Now let us work out the plan upon this basis. To give the northern section of Pennsylvania a judicial representation based upon the population of 500,000, you must include twenty-five counties, running the southern boundary of that district on an even line with the southern line of Centre county, a line running nearly half through the State, with a judicial district representation of not less than twenty-five counties. Look

over the various interests of the twenty-five counties in that district, counties confined to no one interest, but, perhaps, representing all, would such a district require a special judge for a special interest? Following out the idea, how unfair would it be for the eastern section of the State, for Philadelphia, with her 675,000 she could very readily add a few counties around her, and then claim two judges of the Supreme Court, to look after her special interests.

Mr. BAKER. She has them now.

Mr. J. PRICE WETHERILL. She has them now, I know; but under this rule of seven she could claim two. If gentlemen will follow me out they will see that I am not much mistaken. Therefore we have two for Philadelphia and her surroundings. We have one for twenty-five counties in the northern section of the State. We should have two for Allegheny and her surroundings, and this would leave for the southern section of the State, with a population vastly below five hundred thousand, the proper population for one judge; *two judges*. This is not fair, and it is not right, and I doubt very much whether, by a mathematical calculation, the State can be fairly distributed by a quotient so large as five hundred thousand. I hope the matter will be carefully looked into, and its practical workings studied and well understood, before we vote on the amendment offered by the gentleman from Dauphin.

Mr. BIDDLE. Mr. Chairman: I am decidedly opposed to this amendment. It seems to me that the only effect of its passage would be to dwarf and belittle the judges of the court of last resort. All have conceded, no matter how our votes have heretofore been cast on the previous portions of this article, that it is most desirable to lift the judge from beyond the influence of mere party politics, and to guard and preserve his independence by all the machinery which it is in our power to apply.

What does this amendment in effect propose? I know it may be said that in reality it does not do what I am about to state; but its political operation will be just this: You district the State into five districts—

Mr. BAKER. Seven.

Mr. BIDDLE. Well, seven; so much the worse; into seven districts necessarily separately composed of contiguous counties; and although you tell us that each district may make its selection from any

other portion of the State; yet by the very plan of districting the State you educate the people to believe that they must of necessity select from these districts him who is to represent them on the bench of the court of last resort. It will be precisely as it is with the congressional districts of the State. Every one knows that the people of a district are not limited in their selection to the choice of a man resident within the district; but, practically, the effect is always to confine the selection within those narrow geographical limits, and it is absolutely unheard of that a representative is selected from the eastern portion of the State to represent the electors of a western district, and *vice versa*; yet there is no law to forbid it.

Now, what will be the direct effect resulting from this mode of election? You tell the people of the State in advance, that instead of making their choice of these high priests who are to serve at the altar of the law, there are seven men of equal weight and intellectual endowments found in the seven geographical divisions into which the State is divided. You begin by stating a proposition which carries absurdity on its face. Men are not parcelled out as to ability according to mere geographical divisions. If you want respectable mediocrity you can always get it in that way, but the foremost men in the State are not dependent for their intellectual existence upon the narrow lines which Legislatures may choose to draw in separating one district from another.

I want, Mr. Chairman, and this Convention wants—although we seek to attain that object by means a little different—and this community wants, the seven strongest men in the State, no matter from what section they come, to fill the seats upon the supreme bench of this Commonwealth. So far as I am concerned, I disclaim *in toto* the narrow, paltry, petty feeling that would be gratified by finding a single man of these seven drawn from my peculiar neighborhood or geographical division unless he were the foremost, or among the foremost men in the State. God forbid that my thoughts and my feelings should ever be so paltry or so petty as that, under this specious guise of securing a representative to forward the local views of my section. I should prefer a man from this city, when he was, in learning and ability, second to a man from the county of Erie or from the county of Allegheny. If you put it, as I hope it never will be put, upon the ground

of an appeal to the political feelings of the people, I say the same thing. I would rather, and I believe the thinking people of the party with which I have acted, would rather see upon the supreme bench in perpetuity, five men or seven men selected originally from the parties opposed to them in politics—if they go there, casting aside every interest and every influence except that of devotion to the business they are called to perform—than to have by these narrow terms of selection, a man to represent, forsooth, politically my judicial district! I want no such representation. I disclaim it. I want the judge who will sit upon that august tribunal and dispense law neither in accord nor in discord with the political feelings of any party. I want him to do that which is right. I want no partisan or popularity hunter. I want no regard of persons or of parties. I want men to go there absolutely unfettered, and not to feel that a great office, the duties of which they are called upon to perform, is given to them as a reward for their past fidelity to one side or to the other, or for their supposed adherence to the interests of a particular section.

Let us look a little closer into the reasons that have been offered for this districting of the State. We are told, and with some show of force, that in the north-eastern part of the State there is a peculiar character of litigation. We have the Connecticut titles to be decided and administered upon judicially. We are told that in the south-east we have cases affecting the commercial and maritime interests of the community. We are told that in the centre—not strictly a geographical centre, but as opposed to the two corners to which I have referred—we have the mining interests. Again, in that great region which is fed from the oil springs, there is still another class of interests. And you say in advance: "Send us a judge who is familiar with these particular local interests, let him be as ignorant as possible of everything else." Can you make a harmonious unit composed of these discordant elements? There never was a greater mistake in the world. The man whose mind is thoroughly imbued with the principles of the law, no matter from what section of the State he comes; the man who is an educated and a trained man, with large experience and fine intellectual powers, will master in a very short time the particular principles that are applicable to the interests of a particular section of the State. But a man who goes upon

the supreme bench with his narrow views limited to the supposed particular local interests of the section from which he comes, will never be able to grapple with the principles of a great case, even where the interests of his own section are concerned, when it becomes necessary to do so. He simply will be unable to rise, because the power of soaring above the fogs and mists of a lower region does not exist in him. You have clipped him in advance. You have told him that it is unnecessary for him to be anything more than a mere sectional lawyer, and if he attempts to rise into anything like a higher region, he is weighted down in advance by the consciousness of his own debility.

I do trust that gentlemen will pause before they narrow the Supreme Court in the manner proposed by this amendment. I find no fault with what has already been done. I bow cheerfully—with alacrity of acquiescence—to the verdict of yesterday, because behind it I see that anxious feeling to do what we all have so much at heart, to raise these judicial tribunals, one and all, above anything like mere political influence; and I feel sure that that vote is indicative of a sound opinion in this body in that regard, for although I may differ with other gentlemen as to the mode of effecting that which we so earnestly desire to see accomplished, I know, from what I have heard and from what I have seen, that every man who cast his vote yesterday did so with an earnest feeling, a desire close to his heart, that by the vote he was giving he would secure the placing of all our judges beyond anything like political influences. That was the argument put so well by the gentleman from Lancaster (Mr. H. G. Smith.) That was the argument put so well by the gentleman from Blair (Mr. Landis.) Both these gentlemen were in perfect accord with the general line of thought of the gentleman from Dauphin, (Mr. MacVeagh,) who spoke so ably and so eloquently day before yesterday, upon the same subject. They viewed the matter precisely in the same light, but they thought the ways by which the end was to be reached were different. And I say now, in conclusion, do not let gentlemen be misled by this appeal to sectional interests. Let us rise above it. Let us do this work, not as northern men, not as western men, not as Philadelphians, but as men who have at heart only one object, that of keeping the judiciary of this grand old State where it has always been,

first among the foremost, whose decisions, already cited and recognized for the valuable law they contain throughout the civilized world where our own peculiar code prevails, will, if we do not by our action here on this section purposely belittle them, continue in the future to be a beacon light to the seeker after the true principles of jurisprudence.

Mr. BARTHOLOMEW. Mr. Chairman: I must confess that when I first heard this proposition submitted to the Convention, not in its precise shape as submitted this morning, but as it was originally presented and referred, I regarded it as exceedingly plausible. I must confess that for a time it received my approbation; but after considering it deliberately, I have made up my mind that, however plausible and specious it may be, yet it has within it that which is a violation of a principle of right.

Of course, there are two reasons that appeal to the minds of delegates who are favorable to this proposition. The first is one that is worthy of consideration, and of very grave and careful consideration, and that is the neutralizing of the political complexion of the supreme bench. That is an object that we should all strive to obtain, an object that is desirable, one that is worthy of our efforts. There is another, and that is one which appeals to a feeling more unworthy, a feeling of local pride, and the hope perhaps of local preferment; because, however this proposition may be gilded, however it may be veneered, nevertheless it is a proposition which concedes to definite geographical districts the selection of candidates for the supreme bench. Now, upon the political ground, the simple question is, do we not sacrifice too much to obtain the object, to wit, the neutralization of the political complexion of the Supreme Court, by the adoption of this proposition? Cannot the object be obtained by other means simpler and more effective, and not so expensive to principle?

I take it as a proposition that this Supreme Court of ours should not be a mosaic, that it should not be cracked and shattered into pieces, but that it should be a perfect unit, and that the men who compose that court should not be merely men who are big enough in their intellectual or in their legal reputation to spread over a district, but that they should be great enough and grand enough to spread all over the Commonwealth of Pennsylvania, and that for that reason they should

be selected as judges of this court. The people of the Commonwealth, not of a part of the Commonwealth, but of the whole Commonwealth, should have confidence in their ability, in their integrity, and in their learning; and this it is which renders them the proper recipients of this great trust.

I take it that this proposition appeals to me peculiarly because I live in the anthracite coal region, a region the interests of which are regulated by special laws. It has been said, and perhaps well said, by one of the judges of the Supreme Court, that the anthracite coal region of Pennsylvania was like a province; it was a province within the Commonwealth, dependent upon its own laws and its own regulations for its government, and those special laws were almost unknown to any judge outside of those who had spent a life in the enforcement of the laws and the statutes relating to that special district. The gentleman from Philadelphia (Mr. Woodward) when he was upon that bench, coming from the same region, was well acquainted with those laws and those enactments. He was well acquainted with this great interest; he understood this business. And after he left that bench this interest was left without any person on the bench who was familiar or acquainted with it, and we have had difficulties—difficulties that the judges themselves have candidly and frankly acknowledged. We have had cases involving mining rights, lease-hold interests, and the conflict that necessarily arises in working stratas of coal, that could not be readily understood without understanding the practical working and operation of the coal mines. That such questions should have to be passed on by a court unfamiliar with them is an evil, it is true; but is it not one that we had far better bear than rush to another which has within it an element which must depress and lower the character of the bench itself; which must render it not a complete whole, but a divided whole, and that may be an incongruous, a disjointed and a distorted division? When we take men from special districts we may have men who understand the interests of those districts particularly, but can they represent the whole State? Can they know the interests of the whole State? Let us have men familiar with the principles of the law, who understand that which it is their duty to understand; and then, on the mere question of their

practical application to facts arising, knowledge can only be received from those who are in the practical operation of the work; and when once that is understood a man of mind can apply the law, and it is not necessary that every judge should understand the detailed working of every interest within the Commonwealth to apply the principles of law to it.

I am not willing to run the risk which I believe this proposition would result in, of the endorsement or the choice of those who, by reputation or by ability, are not sufficient to cover the Commonwealth, but simply a district. Thereby I believe that we should belittle this great tribunal which ought to represent and protect the interests of the whole people of this Commonwealth; to whose hands are confided the interests of every citizen, the liberty, and the property, and the rights, of every citizen in the Commonwealth, without respect to the occupation in which he is engaged, without respect to his position, without respect to his locality. I say that there should be nothing done that would create a local prejudice upon the bench, but that the court itself should be as broad as the Commonwealth, and that it should have at heart the interests of the whole Commonwealth without regard to locality, and without the danger of begetting prejudices arising from any local or specific interest.

For these reasons I shall oppose this amendment; they are conclusive with me.

Mr. CLARK. Mr. Chairman: It seems to me that this discussion proceeds upon a wrong principle. The office of judge is not in any sense a representative office or the court a representative body. A judge ought to have no constituents. He is not put upon the bench to represent any interest or any locality, or any political party or sentiment, or any other public or local sentiment. He is put upon the bench on account of his profound learning, his intellectual acquirements, and his distinguished qualities as a lawyer and a man.

We have, in this country and in this State, representative officers. Members of the Assembly, members of the Senate, and members of Congress, have constituencies, and are properly said to represent such constituencies; they are sent there at times to represent particular interests in the community and particular localities.

If the principle upon which this amendment goes was carried out, why

should not the Pennsylvania railroad have a representation upon the bench? Why should not the corporations of the Commonwealth be represented? Why should not the interests of manufactures and of agriculture, and all the distinctive and several material interests of the Commonwealth, be represented upon the bench of the Supreme Court of the State? If the principle is a good one in part, it is good all the way through. If Philadelphia must be represented because of her commerce and her manufactures, and the western part of the State on account of its agricultural interests, and the middle part on account of its mining interests, why should not these interests be represented themselves, not by localities, but directly represented as important interests upon that bench? I apprehend that the great desideratum in the Supreme Court is to have a united court, to have men there sitting, not representing any interest whatever in the Commonwealth, but representing merely the learning of the law and the cause of justice.

Why, suppose this was carried into force, one of the judges representing the commercial interests of Philadelphia or the interests of railroad corporations, and another representing the oil interest or the petroleum interest of the north-west, and a question such as the legality of the South improvement company was presented to the court, would the gentleman representing the oil interest feel himself called upon to advocate the interests of his constituency, or the gentleman representing the railroad corporations feel called upon, as a representative man, to represent the interests of railroads and transportation companies? What a scene would this present on the bench of the Supreme Court! I tell you, Mr. Chairman, that the advocates of particular interests should have their seats at the bar, whilst upon the bench we want men devoted to no interest whatever.

I think that wherever the interest of manufactures, or agriculture, or commerce, or corporations, or insurance, or whatever general interests may prevail throughout the Commonwealth interfere, we ought to have no special interest represented upon the bench, but their special claims for judicial protection should be presented by the attorneys of those interests from the bar, and ought to be acted upon disinterestedly by the members of the bench.

I think the amendment starts from a wrong principle, and introduces a new feature in the history of the Supreme Court; and therefore I shall vote against it as an improper measure.

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin, (Mr. Lamberton,) to the amendment of the gentleman from Philadelphia (Mr. Woodward.)

The amendment to the amendment was rejected, there being, on a division: Ayes, seventeen, not a majority of a quorum.

Mr. BUCKALEW. The exact question I believe is on the amendment of the gentleman from Philadelphia (Mr. Woodward.) I am strongly in favor of one of the leading objects in view in the amendment which has just been rejected. It must be evident to every member who reflects, however briefly, upon this subject, that the Supreme Court of the State, as we have determined to constitute it by the votes of the people, must be, and if our ideas work properly will be, a popular court in the best sense of that term; and we should so select the members of that court that popular confidence in it will be maintained under all circumstances, in times of the highest excitement and when disturbing influences come to influence results. To secure this end, it is absolutely necessary that the judges of that court should be divided politically; that they should represent, as far as their election is concerned, the whole mass of the people of the Commonwealth and not a party only.

The amendment which the Convention has just rejected, had the one recommendation—that it would have divided that court in the sense to which I have referred. But there were objections to it, which seemed to me insuperable, and therefore I voted against it—those pointed out so handsomely by the member from Philadelphia who sits behind me, (Mr. Biddle,) and others—and I thought that we could better accomplish our purpose in some other way, in a different form. For the result which you get, in a case of this sort, by the formation of single districts, or districts selecting but one person, is accidental. It may or may not accomplish the purpose of a fair representation of the people who cast votes in the several districts, and the result may depend upon the making of the districts by the Legislature, or by other authority, by which they are constituted, and we

know that gerrymandering is one of the great evils of modern times, and it is an evil inseparable from the plan suggested by the amendment of the member from Dauphin, (Mr. Lamberton,)—the breaking of the State into seven districts for the election of the seven members of our highest court.

Now, sir, the proposition made, and afterwards withdrawn, by the member from Allegheny, on my right, (Mr. S. A. Purviance,) of dividing the State into three grand divisions for the purpose of selecting judges of the Supreme Court, was, in my judgment, much better. You would have, under that proposition, a larger field of selection—a greater mass and variety of ability under your hand. In any case, when you came to make nominations, the selection of judges would not be so much disturbed and perverted by local influences, as in the plan proposed by the amendment which has been rejected.

But I think, after all, the better, and the much better, plan is that which we have had heretofore—the selection of the judges, who are to serve the people of the whole State, by the people of the whole State, so that those whose interests in common are involved in the action of that Court shall act jointly in the selection of the judges of that court. The people are familiar with this system, and they will demand of us very strong and satisfactory reasons for any change.

But one thing is certain. That court cannot retain the confidence of the people, cannot maintain its character as a great popular tribunal, one constituted directly by popular votes, if you do not provide that the judges, from the very necessities connected with the manner of electing them, shall be divided between the great electoral divisions of our people, as they are known to exist, and will always exist hereafter; and, sir, a proposition like that contained in the section before us, will not accomplish this end, that proposition being that one of the two great political divisions of this State, whichever it may happen to be, shall elect three judges of the Supreme Court of the State, by its own votes, next fall, or whenever the first election shall take place. There will be, this fall, a seat on that bench vacant by expiration of term, and then we propose to add two new judges to that court, so that a single election and a single interest in an election shall select the whole three, and thus dominating that court for twenty-

ty-one years at least. The court will be substantially constituted according to the result obtained at a single election!

Now, sir, what was one of the leading ideas of the amendment of 1850, which made judges elective? If you will read that amendment, you will find that the idea of the drafter of that amendment was that one judge of the Supreme Court should be elected every third year. The terms of the judges were fixed at fifteen years, the number was fixed at five; and then the expiration of the terms as arranged, was at recurring intervals, so that one should be elected every third year. But in drawing that amendment, an oversight, I suppose, was committed, and it was ascertained, when the subject came to be examined, that all vacancies that might happen in that court were to be filled for full terms. Soon, by death and by resignation, sundry vacancies happened in that court, and the intended arrangement has already failed. You have now no regular recurring intervals at which judges of that court are elected. In fact, it may happen that all five may be elected the same year; a result not contemplated and one to be greatly deprecated.

By electing judges under the idea of the amendment of 1850, at recurring even periods, three years separated, it would be very likely that in the mutations of politics in the State, the different parties of the State would obtain in an imperfect, irregular, accidental way, representation in that court. But the section before us will, as I have already explained, elect three judges of the same political complexion for twenty-one years' terms, at the first election to be held under this amendment.

I speak here upon the assumption that these amendments which we are preparing to the Constitution can be voted upon at a special election before the month of October next. Of course, that is a question still open to consideration.

MR. CURTIN. That is a vain expectation. [Laughter.]

MR. BUCKALEW. Mr. Chairman: A single point more. The Committee on the Judiciary have not determined this question. They reported to us a section providing for the appointment of the judges of the Supreme Court; but now, since the Convention has determined that the judges shall not be appointed, but that they shall be elected, we have no report from the Judiciary Committee upon



this question of how judges shall be selected. It is all an open question for the consideration of the Convention.

I think that in constituting the Supreme Court we should accept the example set us by the State of New York in the selection of the judges of their court of appeals, or the example set us by the Convention of Illinois in making provision for the selection of judges in the city of Chicago, that they shall be chosen substantially upon the same plan on which members of this Convention were elected; that is, where two are to be chosen at the same time and for the same term, each voter of the State shall vote for one, or where three are chosen, each elector shall vote for two. Members will find on the eighty-third page of the second volume of the American Constitutions the provision which was adopted in the State of New York and upon which the judges of their court of appeals, the highest court of the State, were selected, the court which is now discharging judicial duties in that State, and which has met public opinion and the necessities of the profession and of the people in that State; because whatever complaints have been made of the courts of New York, have been levelled at the local and intermediate courts, as I understand, and not at the court of appeals. Upon that court they have no Barnards, nor Cardozas, nor McCunns. Judges of that class nestle within the comparatively narrow and troubled limits of the city of New York; and the judges that have been subjected to impeachment from the interior of that State have been judges of the inferior and intermediate courts; but that great court of appeals took with it, when it was selected, popular confidence, by reason of the manner in which its judges were chosen. That court, amid abounding complaints of the other judicial tribunals of that State, has held, and now holds, the confidence of the people of the State of New York; and doubtless, by changes hereafter to be made in that and in other States, this principle of even-handed justice in the constitution of courts of justice will be indefinitely extended until the principle shall prevaile the judicial systems of all our States, to their renovation and improvements and to the securing of competent judges for the future.

But, if this particular mode of selecting judges, thus sanctioned by the example of New York, and countenanced in fact by the manner in which we were selected

to seats in this body, shall not be preferred, shall not be considered desirable by reason of particular considerations pertaining to it, we can resort to other modes of securing the same object, and I suppose, before we have passed from this part of our labors, we shall have before us propositions in suitable form, to elicit the opinions of the Convention upon this interesting subject. I have spoken only generally, invited by the character of the section now lying before us.

The Committee upon Suffrage, Elections and Representation might very properly have reported to the Convention a plan for the selection of the judges of our courts.

Mr. SIMPSON. If the gentleman will permit me to interrupt him, I call his attention to the fact that we have reported a section which is now before the Convention, that all vacancies shall be filled for the unexpired terms.

Mr. BUCKALEW. That general provision of course would work completely along with such a reform as that which I have suggested; but I meant to say that the Committee upon Suffrage, Elections and Representation might properly have reported the form of an amendment or amendments with reference to the selection of the judges of our courts. For my own part, I felt reluctant to present anything to the Convention until the Committee on the Judiciary should have made their report, and until the Convention, acting upon their report, should have laid down the general foundations of our judicial system, should have determined the leading and important questions to be passed upon by the Convention, before details were to be considered. The Convention has now decided that there shall be no intermediate court. It has decided that the judges of the Supreme court shall be elected by the votes of the people, shall not be appointed. It has, provisionally at least, determined that the judges of the Supreme Court shall be seven in number, involving the election of two additional ones after these amendments shall have been adopted. Now, we have come to the proper point for considering the question of how these judges shall be selected.

But the thought with which I propose to conclude is this: That the object of dividing them and thus retaining the influence and proper character of that court, which was contemplated by the amendment just rejected for the formation of six districts, can be much better secured by

providing for the election of the judges by the whole State at proper recurring intervals on some plan of reformed voting, which shall accomplish substantially the object which was secured in the State of New York, and which it is desirable that we should comprise in our system.

The CHAIRMAN. Does the Chair understand the gentleman from Columbia to offer an amendment?

Mr. BUCKALEW. No, sir; I offered some remarks. [Laughter.]

The CHAIRMAN. There was an amendment left on the Clerk's desk, and the Chair presumed it was offered.

Mr. BUCKALEW. The section before us, if adopted, will compel the election of judges as heretofore, and will prevent their division. Therefore I spoke against the section as it stands. My argument was of that character, and was therefore legitimate and pertinent to the matter before the committee.

The CHAIRMAN. The Chair is not finding fault with the argument. The amendment of the gentleman was lying on the desk, and the Chair presumed that he intended to offer it.

Mr. ARMSTRONG. Without entering upon any discussion I desire to suggest a word of mere explanation to the Convention. As the case stands now, the pending question would be upon the amendment submitted by the gentleman from Philadelphia (Mr. Woodward) and the various amendments to the amendment are to that amendment. I took occasion yesterday to explain to the Convention that this amendment embraces, in a very scattered, and, as I think, imperfect form, many of the suggestions already embodied in the second section of the report of the committee. It occurs to me that we should advance the convenience of the Convention by taking a vote upon the amendment of the gentleman from Philadelphia at once, so that if it should be voted down, as I hope it will be, the amendments which will then be offered to the original section will come in their proper places and will be voted upon in such manner that they will remain a part of the section under consideration. But there is so much of this amendment which is already embraced in other parts of the report of the committee, that it is subject to the same objections which were made to the first amendment that the gentleman proposed. I believe it would be better to take the vote at once on the proposed amendment of the gentleman from

Philadelphia, and then proceed with direct amendments to the report of the committee.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia, (Mr. Woodward,) which is the third section, practically, of the minority report submitted by him.

Mr. FUNCK. I offer the following amendment, to be inserted at the end of the section:

"The Supreme Court shall be located at the capital of the State, where the judges shall reside, and all its process be returnable."

The amendment to the amendment was agreed to.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Philadelphia, as amended.

Mr. BIDDLE. I call attention to the fact, which I have no doubt is an inadvertence, that as we have changed, in the second line, the number from "five" to "seven," we ought, to be consistent, to change the number, in the fourth line, from "three" to "four." I ask the gentleman from Philadelphia if he will not accept that as an amendment?

Mr. WOODWARD. Certainly.

Mr. ARMSTRONG. That is embraced in the section of the committee.

Mr. BIDDLE. That is so, but not in this section. As the Clerk read it, and very properly, it is "three."

Mr. WOODWARD. I will modify the amendment in that way.

The CHAIRMAN. That modification will be made.

Mr. SIMPSON. I desire to offer a further amendment to the amendment, so that if the amendment is to be adopted, it will suit the Convention. I move to strike out "fifteen," in the second line, and insert "twenty-one."

Mr. ARMSTRONG. I rise to a point of order. That very amendment was voted upon yesterday. ["No."] I know a vote was taken on the question of twenty-one or fifteen years, and twenty-one was sustained. I do not recall the parliamentary form of the question.

The CHAIRMAN. The point of order of the gentleman from Lycoming is that yesterday there was a vote had on this precise question. The Chair does not remember any vote on that question upon this amendment.

Mr. ARMSTRONG. I do not know whether it was upon this section.

Mr. CORBETT. (To Mr. Armstrong.) It was to your section.

Mr. ARMSTRONG. Then I withdraw the point of order. I believe it was a motion to strike out "twenty-one," in the first section, and it was negatived. That was it.

The CHAIRMAN. The Chair will state that the point of order of the gentleman from Lycoming is not well taken.

Mr. ARMSTRONG. I withdrew the point of order on a consideration of the facts as they were represented by gentlemen around me.

Mr. SIMPSON. My object in offering this amendment is this: If the committee design to adopt the amendment of the gentleman from Philadelphia, (Mr. Woodward,) it should be made perfect before its adoption, so that we shall not be met afterwards with the objection that we cannot alter it. We ought to make it now what we want it to be, and then, if we do adopt it, it will be right.

The CHAIRMAN. The amendment to the amendment, offered by the gentleman from Philadelphia, (Mr. Simpson,) is in order.

Mr. ARMSTRONG. Will the Chair state distinctly what the amendment is?

The CHAIRMAN. It is to strike out "fifteen" and insert "twenty-one" in the second line.

The amendment to the amendment was agreed to, there being, on a division: Ayes, fifty-seven; noes, twenty-five.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Philadelphia (Mr. Woodward) as amended.

Mr. CASSIDY. Mr. Chairman: I desire to ask the mover of the amendment whether he means to provide in any other section of his article for that part of the section reported by the committee which requires the concurrence of a given number of judges to decide a case. Here, for example, it is provided that "the concurrence of four shall be necessary to any decision." So far as I am personally concerned, I am in favor of requiring the concurrence of at least four of the judges before any final judgment shall be announced by the court; but if my friend from Philadelphia means to provide for that in any other stage, then I have nothing to say.

Mr. WOODWARD. That is an after question. Four are a quorum. If we conclude hereafter to require all four to concur in a judgment, that can be provided for.

Mr. ANDREW REED. I move to amend the amendment, by inserting, after the word "well," on the third line, the words, "and shall be ineligible to re-election."

The CHAIRMAN. The question is on the amendment of the gentleman from Mifflin (Mr. A. Reed) to the amendment of the gentleman from Philadelphia (Mr. Woodward.)

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia (Mr. Woodward) as amended.

The amendment was rejected.

The CHAIRMAN. The question recurs on the reported section as modified.

Mr. ARMSTRONG. On that question I desire to make a word of explanation. It is only intended in this section to provide that the judges of the Supreme Court shall be elected. We have not undertaken to provide in this section as to the other courts. All that the committee have reported on that subject will be found in the fourth section, where it is provided that judges of the common pleas shall be elected in their respective districts. That is the way it stands as it comes before the House at the present time.

Mr. DALLAS. The section now before the committee has been so amended as to make the first two lines read as follows: "The Supreme Court shall consist of seven judges, who shall be elected by the qualified voters of the State at large." I now move to amend the amendment by inserting after the word "judge," in the second line, the words:

"In all elections of judges, whenever two or more are to be elected for the same term of service, each voter may give his votes to a smaller number of persons than the whole number to be chosen; and in case of the election of three, he may divide his votes equally between two; and the candidates highest in vote shall be declared elected."

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia (Mr. Dallas.)

Mr. SIMPSON. If the section reported by the Committee on Suffrage, Elections and Representation be adopted, declaring that all vacancies shall be filled for the remainder of the unexpired term, it will be impossible to have two judges elected on the same day for the same term. There might be two elected on the same day, but not two for the same term,

because with seven judges divided up into terms of twenty-one years, the regular filling of the terms would occur triennially. If by death, resignation or other cause, a vacancy occurred, it might be filled at the time of the election of a judge for a full term, but his election could only be for the remainder of the term.

Mr. BUCKALEW. Mr. Chairman: The question of arranging the terms of the judges is not now before the committee, unless we retain that part of the section which I understand the chairman is willing to transfer over to the schedule. I ask for the reading of the section itself.

The CLERK read as follows:

"The Supreme Court shall consist of seven judges, who shall be elected by the qualified voters of the State at large. They shall hold their office for the term of twenty-one years if they shall so long behave themselves well, and shall not be eligible to re-election. 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. The judges of the Supreme Court who shall be in office when this Constitution takes effect, shall continue until their commissions shall severally expire. Two judges, in addition to the number now composing said court, shall be elected at the first general election after this Constitution shall be adopted, whose term of office shall begin on the — day of — 18—.

Mr. BUCKALEW. I suggest that the latter part of the section, or some modification of it, is proper for insertion in the schedule, and is inappropriate in the body of the Constitution. All provisions that are temporary in their operation, or provisional, ought necessarily to be placed in the schedule at the end of the Constitution, and the body of the Constitution should contain nothing except permanent provisions, so that when the Constitution is printed thirty or forty years hence, it shall not be encumbered with provisions which have expired, in fact expired the very year the Constitution was adopted or within a few years after its adoption. It is convenient to have all this determined in the arrangement of the schedule; and besides that, this subject of the arrangement we shall make in regard to the commissions of the judges who are now in service in that court is, to my mind, a distinct and independent question from the settlement of the general principle on which that court should

hereafter be constituted. The Convention will find extreme difficulty with reference to these unexpired commissions, and we ought to have that subject considered by itself. It will certainly be desirable, if we can accomplish it, not to disturb judges who now sit upon that court, but to make our arrangements so that they shall go into operation without violating any vested interest in a judicial office, if we can conveniently do so.

I understand that the chairman does not insist, therefore, upon having the temporary matter contained in this section, but is willing to confine the section to general principles. If this temporary matter is to be retained, it ought to be in a distinct section, so that it shall not be mingled with the other matter, upon which we can pronounce without taking that into account.

Mr. ARMSTRONG. Mr. Chairman: The subject-matter of the paragraph of this section referred to, is undoubtedly proper matter for the schedule; but it was deemed proper by the Committee on the Judiciary to embody it in the report in order that it might come before the Convention and be passed upon. It will doubtless be placed in its proper relation by the Committee on Revision. All temporary provisions ought to be in the schedule, as a matter of course; but it is proper that the Convention should pass upon this matter, as it is immediately cognate to the subject now under consideration. The Committee on Revision will doubtless place it where it properly belongs.

Mr. BUCKALEW. I called attention to this question because it is connected with the amendment which has been offered, as indicated by the objection made by the gentleman from Philadelphia on my left (Mr. Simpson.) Of course we shall provide that the two new judges to be added to this court by raising the number to seven, shall be elected at the same time; and the amendment proposed by the member from Philadelphia (Mr. Dallas) will, in advance, provide for that first election of these two judges, at all events, and would apply to the re-election of their successors in future time. But what I deprecate is, by the adoption of the latter part of this section, to conclude us as to the manner in which we shall arrange for the election of the other judges of that court hereafter. I want it left out at present, and submitted hereafter in some way,

because we are not now in a condition to consider it.

If you have a court of seven judges, as a matter of course it will be convenient to elect two judges at the same time at successive periods of five years. By electing two judges every five years, you will have the six associate judges of this court arranged in proper terms, and then the Chief Justice or the additional judge may be elected at recurring periods of fifteen years. You may elect three at one time, or you can select a Chief Justice separately, as they do in the State of New York.

My idea is that after the present judges of the Supreme Court have finished their terms, after they have each in turn enjoyed the honor of being Chief Justice, a Chief Justice for fifteen years shall be elected as such, and that we shall get rid of this anomalous, I had almost said absurd, system which we now have of rotating Chief Justices. I do not know where it originated. I do not know of any such system anywhere else on the face of the earth. I think the New York plan of electing a Chief Justice, as such, for a full term is the better one. Then you have a recognized head of that court, a permanent head of that court, a dignified head of that court. You do not introduce confusion about who shall be Chief Justice, as we now have, for now some of the Chief Justices may serve one or two years, and others of them may serve eight or ten.

But all this matter ought to be deferred. I move, therefore, to strike out the latter part of the section, which the chairman, himself, admits ought to be inserted elsewhere, and leave the question how the terms shall be arranged, to be settled hereafter, because that is indissolubly connected with the other question which I have suggested.

The CHAIRMAN. The Chair will remind the gentleman from Columbia that there is an amendment pending, offered by the gentleman from Philadelphia (Mr. Dallas.)

Mr. DALLAS. I withdraw it for the present for the purpose of allowing the gentlemen from Columbia to make his motion.

The CHAIRMAN. The amendment is withdrawn.

Mr. BUCKALEW. I move to strike out the last clause of the section.

The CHAIRMAN. The portion proposed to be stricken out will be read.

The CLERK read as follows :

"The judges of the Supreme Court who shall be in office when this Constitution takes effect, shall continue until their commissions shall severally expire. Two judges, in addition to the number now composing said court, shall be elected at the first general election after this Constitution shall be adopted, whose term of office shall begin on the — day of —, 18—."

Mr. BUCKALEW. I desire it to be understood that I make this motion for the purpose of freeing this section from this whole subject, and not out of hostility to anything contained in it. There will be no difficulty in arranging it afterwards.

Mr. ARMSTRONG. I see no objection. If I were at liberty to do so, I would accept the proposed amendment, for this matter is appropriate to the schedule and was only inserted here as expressing the judgment of the committee upon that particular subject.

Mr. J. R. READ. I should like to ask whether the motion of the gentleman from Columbia includes the last two lines of the section? I understood him to move to strike out all after the word "election." As to the last two lines, "the judge whose commission will first expire shall be Chief Justice, and thereafter each judge whose commission shall first expire," does the gentleman move to strike them out?

Mr. ARMSTRONG. I think the gentleman has misapprehended the part of the section proposed to be stricken out.

The CHAIRMAN. The Chair will inform the gentleman from Philadelphia (Mr. J. R. Read) that there is a written substitute for the printed section.

Mr. J. R. READ. I was not aware of that fact.

The CHAIRMAN. The question is on the amendment of the gentleman from Columbia to strike out the clause indicated by him.

The amendment was agreed to.

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

Mr. DALLAS. I now renew my amendment to add to the section :

"And in all elections of judges, whenever two or more are to be elected for the same term of service, each voter may give his votes to a smaller number of persons than the whole number to be chosen; and in case of the election of three he may divide his votes equally between two; and the candidates highest in vote shall be declared elected."

Mr. BUCKALEW. I hope the gentleman will modify his amendment by leaving out the latter part about three being voted for.

Mr. DALLAS. I accept the modification.

Mr. ARMSTRONG. I would suggest to the gentleman that, as this amendment is general and is applied to all judges, I have no objection to it and will vote for it; but it occurs to me that it is not proposed in the proper place. The section under consideration relates exclusively to the Supreme Court. When we come to the general provision, that which relates to all judges alike, I would vote for the suggestion of the gentleman from Philadelphia. I think, at this time, it will be well to withdraw it, as it is not germane to the particular question in the section, which is the constitution of the Supreme Court alone.

Mr. DALLAS. Mr. Chairman: I have accepted the modification suggested by the gentleman from Columbia, and I have only to say a single word in explanation of this amendment.

It proposes to incorporate into the judiciary article a principle that is entirely and thoroughly understood in this committee, and does not require elaboration, and certainly will not bear elaboration from me in this body, where there are others present so much better able to present the considerations that ought to enter into our view of the subject than I can do. It is true that the amendment, as I have offered it, proposes to make the system of free voting applicable to the election of all judicial officers throughout the Commonwealth wherever it can be applied. The suggestion of the gentleman from Lycoming that it should not properly be placed at this point, is only answered by requesting him to point out where it can better be placed. I have looked through the article with a view of discovering it, and as the article was prepared with a view of having the judges of the Supreme Court appointed, and we have now changed it so as to make it read that they shall be elected, it seemed to me that any point where a provision for the election of judges was made would be the proper place to insert a provision as to how the judges should be elected. I should like to hear from the gentleman from Lycoming on that point.

Mr. ARMSTRONG. I would suggest that on the second page of the report, in lines thirteen, fourteen, fifteen, sixteen and seventeen, there is this provision: "Should

any two or more judges of the circuit court"—which I will change to the Supreme Court—"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 may be convenient, cast lots for priority of commission and certify the result to the Governor, who shall issue their commissions in accordance thereto."

I suggest that the proposal of the gentleman would be appropriate to that clause; and that what he proposes, as well as the language that I have read, should be a separate section and should come in as a general provision and not among those that relate to the constitution of the Supreme Court.

The CHAIRMAN. The Chair understood the gentleman from Philadelphia to accept the modification suggested by the gentleman from Columbia.

Mr. DALLAS. Yes, sir. The only objection to accepting at once the suggestion of the gentleman from Lycoming is that the lines which he has read occur in a section relating to the circuit court, which section I assume will be stricken from the article.

Mr. ARMSTRONG. That part of it, I think, will be adopted, as it is important; but the necessary changes will be made. The words "circuit court" will be stricken out and the words "Supreme Court" inserted. Then it will apply to all the judges of record in the State; and in that shape it would become a general provision, and with the amendment which the gentleman from Philadelphia proposes, I think it would be a very good section.

Mr. DALLAS. I am very glad to accept any suggestion from the chairman of this committee; and if it is equally satisfactory to the committee of the whole, I will withdraw my amendment and introduce it again at the point which he has suggested.

The CHAIRMAN. The amendment of the gentleman from Philadelphia is withdrawn. The question is on the section as amended.

Mr. MANN. Mr. Chairman: For the reason given by the gentleman from Columbia for striking out the latter part of the section, which relates to the election of two additional judges, I ask the chairman of the committee why the words commencing after "re-appointed," in the fifth line, should not be stricken out. It is merely temporary; it simply provides that the judges in office shall continue

until their commissions expire. Why should not that be left to the schedule?

Mr. ARMSTRONG. I will state to the gentleman that it is stricken out, and was one of the main reason which induced me to draft a modification of the section, which is in writing at the Clerk's desk.

Mr. MANN. I did not understand it.

Mr. KAINE. Mr. Chairman: The question now is upon the section, I believe.

The CHAIRMAN. That is the question.

Mr. KAINE. I move to amend the section by striking out all after the word "shall," in the first line, and inserting the following:

"Be composed of eight judges, who shall be learned in the law, one of whom shall be Chief Justice. Three of said judges, to be assigned by the Chief Justice for that purpose, shall constitute a separate court, which shall be called the Supreme Court of appeals, for hearing and deciding all such matters as shall be prescribed by law, with the like force and effect as the Supreme Court; but the Supreme Court may order any case heard in this court to be argued before the Supreme Court in banc. Of the judges assigned to hold the Supreme Court of appeals, the judge oldest in commission, or oldest in commission and senior in age, shall preside. All of said judges shall be elected by the qualified electors of the State at large, for the term of sixteen years, except as herein provided, at the times and in the manner following: At the general election in the year 1873, four persons shall be elected judges of said court, two for twelve years and two for a full term, and every fourth year thereafter two or more persons shall be elected, so that the full number of judges of said court will be maintained. 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 person highest in votes 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, 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 office for the time or terms for which they shall be selected, if they shall so long behave themselves well; but for any reasonable cause, which shall not be ground for impeachment, the Governor shall remove any of them, on the address of two-thirds of each branch of the Legislature. All regular terms of service in said court shall commence on the first Monday of December next following an election for filling the same."

Mr. WRIGHT. Will the gentleman give way for a motion that the committee rise?

Mr. KAINE. Yes, sir.

Mr. WRIGHT. 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 (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.

#### PETITIONS AND MEMORIALS.

Mr. DALLAS presented a memorial of nineteen citizens of Philadelphia; a memorial of fifty-one citizens of Allegheny county, and a memorial of seven citizens of Philadelphia, praying that a suitable religious acknowledgment be inserted in the Constitution of the State, which were laid on the table.

Mr. WORRELL. I move that the Convention take a recess.

The motion was agreed to, and (at twelve o'clock and fifty-eight 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. LILLY. I move that the Convention resolve itself into committee of the whole on the article reported by the Committee on the Judiciary.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose this morning, the question before the committee was the amendment of the delegate from Fayette (Mr. Kaine) to the second section of the article reported by the Committee on the Judiciary.

Mr. EWING. With your permission, Mr. Chairman, and with the permission of the chairman of the Committee on the Judiciary, I should like to make a suggestion and a request, not only for myself but for one or two others who have spoken of it. By striking out the circuit courts from the system reported by the Committee on the Judiciary, a number of changes will necessarily be made in the other sections, and the chairman has been suggesting amendments that should be made. Now, for one, I should like exceedingly to see the remaining sections of the report in print, with the amendments made necessary by striking out all matters pertaining to the circuit court; and my suggestion is that it would accommodate us very greatly if the chairman and a majority of the committee could, by Monday, put on our desks, in print, the residue of the reported article as it will be amended by him when section after section comes up.

Mr. ARMSTRONG. I had thought of doing the very thing suggested by the gentleman from Allegheny; but it occurred to me that as the report has passed entirely out of the jurisdiction and control of the Judiciary Committee, it could not be done without some suggestion or intimation from the House; but if it be the pleasure of the House that it shall be done, I will prepare a copy of the report as it will stand when modified by the votes already taken in committee of the whole.

The CHAIRMAN. The Chair will suggest that the committee of the whole have no jurisdiction of a question of that kind. All that passes before the committee of the whole are the amendments proposed.

Mr. ARMSTRONG. I suppose it would not be a matter appropriate for a resolution, but I understand from the general expression of gentlemen in the House that it would be acceptable to the members, and with that understanding I will prepare it.

The CHAIRMAN. By common consent it can be done.

Mr. KAINE. I should like to know before I go on with my remarks, what the suggestion is. Is it to strike out everything contained in this article pertaining to the circuit court, and then have it printed?

Mr. ARMSTRONG. So I understand it. The action of the House in striking out the circuit court necessarily compels certain modifications in the report in other portions which have not yet been acted upon. It is only that which is clearly within the action of the House that I would amend.

Mr. MACCONNELL. I would suggest that the amendments already adopted be printed also.

Mr. ARMSTRONG. Yes, sir.

Mr. KAINE. Mr. Chairman: I desire to withdraw from the consideration of the committee all that part of the amendment offered by myself, commencing with the word "all," in the tenth line, to the close of the amendment.

The CHAIRMAN. The amendment of the gentleman from Fayette (Mr. Kaine) will be so modified.

Mr. EDWARDS. Let it be read as it now stands.

The CLERK read as follows:

"The Supreme Court shall be composed of eight judges, who shall be learned in the law, one of whom shall be Chief Justice. Three of said judges, to be assigned by the Chief Justice for that purpose, shall constitute a separate court, which shall be called the Supreme Court of Appeals, for hearing and deciding all such matters as shall be prescribed by law, with the like force and effect as the Supreme Court; but the Supreme Court may order any case heard in this court to be argued before the Supreme Court in banc. Of the judges assigned to hold the Supreme Court of Appeals the judge oldest in commission, or oldest in commission and senior in age, shall preside.

Mr. ARMSTRONG. Does the gentleman omit the third line, "and the concurrence of five shall be necessary to a decision," at this time?



Mr. KAINÉ. Yes, sir; that was stricken out of the printed copy before I offered it.

Mr. ARMSTRONG. The purpose, as I understand, of the gentleman is to raise the single question for the consideration of the House whether the Supreme Court shall be divided?

Mr. KAINÉ. Yes, sir; the purpose is to raise that single question. I prefer doing so now, in consideration of the action and votes and suggestions that have been made in the committee during the forenoon.

I prepared the section as now offered with a view to eliminate from present consideration the subject of electing judges of the Supreme Court, upon the system and plan proposed in my original amendment, which may be called the free vote, or the cumulative vote, or any other name that may be chosen. If it should be determined by this Convention that the judges of the Supreme Court and of the several courts of common pleas in this Commonwealth should be elected upon that system, a section can be very easily framed to form a part of the judiciary article of the Constitution upon that subject. It will be better there, if it should be considered proper by the Convention to adopt it, because the provision then can cover all judges to be elected, both those of the Supreme Court and those of the common pleas. On account of the action this morning and the suggestions made this morning in committee, I have withdrawn that portion of the section, although in the amendment made to the Constitution in 1850, in regard to the election of judges, every detail was contained in the article itself. It provided for the election of judges, it prescribed the terms for which they should be elected, and everything of that kind; but as that was a simple amendment, and as we are making several amendments, or an entire Constitution, this could be embraced in the schedule; but what I now propose is proper to be embraced in a separate section of this article. In the minority report that I had the honor to present to this Convention on the twenty-seventh day of March last, I said that:

"A remedy for existing and prospective difficulties might be found in 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 dif-

ferent classes of cases, and in a more efficient organization of the courts of common pleas."

In pursuance of that suggestion then made, I have prepared this proposition, which differs somewhat from the article originally presented by me as part of my minority report. I prepared that as I did in order that the present judges of the Supreme Court might be retained in their positions as long as the system would warrant. In order to carry a system of this kind into operation, two or more judges must be elected at the same time. We shall elect four at the coming election next fall, if my proposition be adopted, and four years thereafter elect two more; but in order to elect within four years from that time, two would have to retire, and so on until the whole would be elected in that way; and the provision then was to elect every four years, and to elect them for the term of sixteen years. One object that I had in view in making that arrangement I will now state to the committee, because I conceive it to be a point of very great importance.

At present, and as long as the present Constitution exists, the election for President of the United States always takes place in an even year, 1872, in 1876, 1880, and every fourth year thereafter. My purpose was to elect these judges in an odd year, so that the election of judges and of the President of the United States should never occur in the same year. I think that a matter of very considerable importance. Suggestions of that kind have also been made on the floor during this debate.

The great trouble seems to be to provide some mode for the relief of the Supreme Court, there being too much business for it, as at present organized; and various schemes have been presented to the consideration of this Convention with that view. I have presented this one. Whether it will meet with any better consideration or any more favor from the members of this Convention than that which has preceded it, is yet to be determined. I propose that the court shall consist of eight judges; that the Chief Justice of the Supreme Court proper shall assign three judges to hold a court, to be called the high court of errors and appeals, for the hearing and decision of all such matters as shall be prescribed by law, with like force and effect as the Supreme Court.

I introduced that clause, referring the matter to the Legislature, to make the

system flexible, because the Legislature could determine, and would determine, no doubt, by an act of Assembly, what cases and what matters should be heard before this court of appeals. I would give the court of appeals jurisdiction of all appeals in equity from the courts below, in all appeals from the orphans' courts, in all appeals from the decree of the courts of common pleas, in the distribution of money, on the reports of auditors, and things of that kind.

That would take from the Supreme Court proper a very large amount of business with which it is now encumbered, and which could as well be heard and decided by three judges separately, in this way, as five can decide it now. I provide that if there is any difficulty in any case as to rendering a decision by the court of appeals, a manner shall be provided in which the case shall be taken into the Supreme Court proper and there heard before the Supreme Court in banc, thus securing unanimity of decisions upon all important questions.

Although my friend on my right (Mr. Cuyler) deprecated a system of this kind the other day, I apprehend that as uniform decisions could be had on questions in that way as we have now. One of the complaints now, and I suppose it will hardly ever be any better, is that there are too many decisions that do not conform one with another. One reason given for that is that the judges of the Supreme Court have too much to do; that they are overworked and cannot give to all cases the consideration to which they are entitled and which they deserve. In that I have no doubt there is some force; but I think there need be no apprehension of any difficulty of that kind here. It is certainly the case in England. In a few remarks, which I made the other day on the subject of the circuit courts, I referred to the report of the commission composed of the most eminent lawyers in Great Britain on the subject, which had been very kindly furnished me by my friend, Mr. Cuyler. In reference to that quotation made by me, I was surprised to hear the gentleman from Philadelphia (Mr. Biddle) say that a report of that kind or an opinion of that kind ought not to weigh a feather with this Convention. I thought a report of that kind, if it accorded in anything with our views, was entitled to very considerable weight. A report of that kind, coming from ten or fifteen of the most

distinguished lawyers of Great Britain, upon such a subject, I thought was entitled to consideration, by me at least. I have been taught to believe that we had taken the foundations of our laws from Great Britain. When the gentleman from Philadelphia finds in a case reported in the Superior Courts of Great Britain an opinion that suits a case here, I warrant you that he refers to it and relies upon it as authority in the courts of Pennsylvania. I have learned to believe differently of Blackstone from the opinion declared once by a lawyer to a judge who was deciding something entirely different from the law as laid down by Judge Blackstone in his commentaries. The lawyer brought a copy of Blackstone into the court and read it to the judge, and then said to him: "If your Honor please, I do not read this for the purpose of satisfying you that you committed an error in your decision, but merely to show you what a great fool old William Blackstone was." [Laughter.]

I think that anything that emanates from those distinguished lawyers in Great Britain is entitled to some consideration. The proudest intellects that have lived in this world since the advent of the christian era have flourished in Great Britain, and have ornamented and adorned her bar and her bench. We have their statutes now relied upon every day, such as the statute of Elizabeth on the subject of frauds and perjuries, and many others. Therefore I say that if they have adopted and carried into practice a system of this kind with effect and good advantage, I do not see why the same could not be done here.

Appeals can be taken from the courts below, from all the courts that I have named, to this court of errors. These judges can send at the same time to the other court, sitting in the same place, if it is so provided by law; they can confer together, and when necessary the whole number of judges can sit in banc. That may be done either under an act of Assembly or a general rule or order of the Supreme Court. Therefore, in my opinion, it presents advantages that none of the other projects that have been considered by the Convention offer to us.

I provide for the election of judges for sixteen years. By a pretty decisive vote of this Convention, I believe the sentiment of the Convention is that judges of the Supreme Court should continue in office for twenty-one years. I am not

very tenacious about that. I prefer a term of fifteen or sixteen years; but if a majority of the Convention are of a different opinion I am perfectly satisfied. All I want is to endeavor to produce in this Constitution what has been so much talked about here, more judicial force, and I propose to provide that judicial force for the Supreme Court by this amendment. I propose to provide a greater judicial force in the courts of common pleas by dividing the State into districts as I proposed in the minority report, which is printed in the Journal, by providing for the establishment of judicial districts to be composed of three judges; those judges to be elected by the people of each district; each judge to hold the court of common pleas, the court of oyer and terminer, quarter sessions of the peace and orphans' court, and never to hold a court more than once in succession in the same county, and then at least once a year, and as much oftener as the Legislature may provide; or, if it should be thought better to put it into the article of the Constitution, that can be done, although I would not prefer it; I would leave the Legislature to provide what number of terms in a district the judges of this court should meet in each county and there hold a court in banc, and then and there hear all motions on reserved questions of law, all motions for new trials, all arguments upon important legal questions, and decide them. If a decision were then and there made after full and ample hearing before those three judges and a unanimous opinion delivered by them, I think there would be very few cases taken from a decision of that kind to the Supreme Court. It would furnish a sieve, as I believe the gentleman from Philadelphia called it the other day, through which cases would be strained, and those only that did go through the sieve would go to the Supreme Court. The finer matter, the more important cases, are not to be decided by this court finally; but it is to be supposed that when cases of small amount, involving no particular legal question, no constitutional question, no great principle of law, have been decided by this court in banc, by the three judges or two judges, the parties would not be anxious to proceed further and incur more costs and expenses in the prosecution of their suits.

That is the plan by which I propose to strengthen the courts of common pleas. That is what is required; that is what is

desired; and I think this kind of system will produce the very thing itself. Having first strengthened the courts of common pleas in this way throughout the Commonwealth, and then the Supreme Court as I indicate in the proposition now before the committee, and as I have tried to state and illustrate by the few remarks that I have made, I think everything would be accomplished that we can accomplish in this direction.

So far as the courts of common pleas in the larger districts are concerned, although I have proposed a plan for them, it belongs, I think, peculiarly and especially to the gentlemen from those districts, from the city and county of Philadelphia, and from the city of Pittsburg and county of Allegheny, to devise some means for arranging their courts to suit themselves. If they cannot agree, of course some general system may be made that will embrace them as well as every other part of the Commonwealth.

A number of these propositions which I had printed are in the hands of gentlemen, but they are not printed precisely as they have been offered. As this amendment is now offered, I place no limitation upon the Supreme Court in regard to the number that shall constitute a quorum, nor the number that shall render a judgment. It now reads: "The Supreme Court shall be composed of eight judges, who shall be learned in the law, one of whom shall be Chief Justice." I have stricken out the words which follow in the printed copy, "five shall constitute a quorum, and the concurrence of five shall be necessary to a decision," leaving it as the old Constitution now is on that subject. If it should be thought better to insert some number that shall be necessary to concur in every decision, of course I shall have no objection to such an amendment. I so wrote the plan originally; but I wanted to leave the system as flexible as possible, because I am opposed to putting any legislation or any acts of Assembly into the Constitution. I provide that in important cases, when the court desire it, everything that is heard in the court of errors and appeals shall be heard on reargument before a full bench of the Supreme Court or the court in banc, which I have already stated I think will obviate the difficulty suggested by my friend (Mr. Cuyler) when speaking upon this subject the other day.

In my opinion, Mr. Chairman, the adoption of these two plans would afford

the relief desired by the people of Pennsylvania in the judiciary. I am opposed to a complicated judiciary. I want to leave it as simple and as plain as possible. Sir, I would not to-day give the judiciary system of Pennsylvania, as inefficient as it is thought to be, for that of any other State in this Union, and I believe I am acquainted with them all. I would not exchange the Pennsylvania system to-day, as it is, for that of Illinois or Ohio, or any other State in this Union, with all their courts, circuit or otherwise. I believe that our system can be remedied in this one particular; it needs a remedy in this respect—that is, to give more force to both the branches of our judiciary, to the courts of common pleas and to the Supreme Court; and that done, I think we have accomplished everything that can be desired.

Mr. COCHRAN. Mr. Chairman: The proposition which is now pending before the committee is one which, I regret to say, I cannot vote for, although I hoped to vote with the gentleman from Fayette (Mr. Kaine) on the measures which he had proposed in his minority report, for they, as I read them in that report, as a general thing, met my approbation. I had no thought of saying a word this afternoon on this matter, but as the subject is up and the committee is apparently approaching a vote, I will submit a few suggestions which have occurred to my mind on this general subject.

I am one of those who believe that the judicial system of Pennsylvania is one which, in its material parts, is admirably adapted to the wants and the interests of the people of the Commonwealth. I know of none which is better, and I desire to maintain it in all its great fundamental principles and general outlines. The truth is, sir, that there is but one trouble about our judicial system, in my estimation, and that is that it is overloaded. The point is to relieve the courts from a great deal of the burden which is imposed upon them, and to give them additional force in order to enable them to discharge the duties which are devolved upon them.

Now, the practical question is, how are we to arrive at that result? It is not hard to understand why it is that our courts are now overburdened. A great many things have occurred of late years, especially in our Legislature, and in other respects, which have tended to overburden them. A great many questions have risen out of the business relations between them-

selves, the public and individuals, and the mutual contentions of the large corporations that exist in our State, which have multiplied and increased the labors of the courts. Apart from that the legislation of the State has taken such a direction that it has imposed upon the courts a great deal of additional work which was not laid upon them in former times.

One of these difficulties proceeds, as gentlemen will very readily ascertain, from the change which has been made in the law of evidence. The consumption of time in the trial of causes in our courts has been ordinarily doubled, if not trebled, by the introduction of the examination of parties as witnesses. I say nothing about the policy of that change, whether it was right or wrong, but it exists as a fact, and the practical experience of the courts is that it has doubled the time ordinarily consumed in the trial of cases, and especially of cases of any importance. That has prevented the courts from disposing of the business before them in the same time that it had previously occupied, and has, of course, increased their labor and delayed the administration of justice. If we will look at this matter deliberately, we will all admit that we find in this one thing a cause why the administration of justice in our State is overburdened under our existing system, and why it is necessary that some provision for the relief of the courts should be made.

But further than that, Mr. Chairman, there is another source from which a great deal of embarrassment has been occasioned to our courts in the transaction of business; and that is, the accumulation of labor which has been thrown upon them by the Legislature in referring to the courts various matters which, formerly, they had nothing to do with, and which I contend they never should have anything to do with. Look at your matters of local incorporations of boroughs, of local administration of townships, of changes of election districts, of the division and alteration of townships, and all that great mass of subjects which have been thrown in upon the courts within the last few years, and which interfere with the regular discharge of their duties, and accumulate the business which is laid upon them to perform.

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

Mr. COCHRAN. Yes, sir.

Mr. WOODWARD. If the gentleman thinks the courts ought to be relieved from them, why did he not vote for it?

Mr. COCHRAN. I do not see the point of the gentleman's inquiry. If he will tell me where or when I had the opportunity to do so, I will try to reply.

Mr. WOODWARD. The gentleman, with others, voted down an amendment which contained a relief for the courts from those very subjects.

Mr. COCHRAN. There were other things contained in that amendment which I could not vote for. I might have voted for that amendment if that had been the only thing in it; and if I had so understood it, I should have voted for it, no doubt; but I do not understand that the amendment of the gentleman from Philadelphia, against which I voted, met that particular point. It provided for depriving the judges of patronage in the matter of appointing commissioners and things of that description; but it did not, as I understand, interfere with their jurisdiction in the particular matters of local concern to which I have referred. I think it was altogether a different proposition from that which I was discussing when the gentleman interposed his inquiry.

Now, sir, what is the effect of this piling on of miscellaneous matter upon our courts? The effect of it is the delay, and the disturbance, and the interruption which occur in the trial of causes. The court meets in the morning with a cause pending and a jury in the box; and one hour of the morning session is probably occupied with the disposition of this miscellaneous business, and there the jury sit, and there the court sits, and there is nothing done in the dispatch of the particular case which is on trial. The court meets in the afternoon, and a scene very similar to that of the morning occurs again. Every member of the bar who has some miscellaneous matter of the character which I have partially described, obtrudes it upon the court at the time of its meeting and delays the court and keeps it off from taking up the case which is pending before it; and so time is lost and trials are delayed and the disposition of causes is postponed, and thus it is that the judicial system of Pennsylvania is overloaded and unable to discharge the business which is piled upon it, largely because of the course of our legislation.

Sir, I do not want to disturb the symmetry of the system of the judiciary as it

is now established in our Commonwealth. I want simply to give further assistance to its ministers, and further aid in the disposition of the business which is before it, and that is the public necessity which we should provide for. I am not in favor and have not been in favor of the creation of new *general* tribunals in the State. I believe, sir, that when a case has been tried in the court of common pleas, it should go directly up to the highest court in the State having appellate jurisdiction and be there finally determined. Having this view, if I had been present, I should have been constrained to vote against the institution of intermediate courts, and, sir, I do not believe that it is imposing too much labor upon the Supreme Court of this State to require it to decide these cases as they are taken up to it on writs of error or appeal from the subordinate tribunals. I believe that the Supreme Court of the State is adequate to that duty, and I have voted to increase the number of the judges of that court by two to give them further help and to enable them to divide the labor, to some extent, among a larger number of judges.

It has been suggested here that the judges must sit in banc to hear all cases. That is no doubt true; but at the same time, a great part of the labor is in preparing opinions, and if you have seven instead of five judges, you have a larger number of gentlemen among whom that labor may be distributed, and, therefore, relief is afforded to the members of the court.

Mr. Chairman, the Legislature of this State has, within a year or two, done a very wise thing in passing a law which permits the judges of the Supreme Court simply to affirm a judgment where they think the court below has decided it correctly, relieving them from the labor of writing opinions, giving the reasons for their affirmation of that judgment. That is a great relief to the Supreme Court of the State, necessarily so; and it is so great a relief (because I apprehend that the proportion of the cases affirmed is very greatly larger than the proportion of cases reversed) that the court has its labors largely diminished by that single provision of the act of Assembly. I have no doubt that the Supreme Court of this State is adequate, fully adequate, or soon will be, if not now—fully adequate to the decision of all causes brought before it, with the exercise of ordinary industry,

by the addition of two judges to the number of those who now occupy the bench.

But, sir, I do not want that court divided. I voted this morning against the election of its judges by districts, and I cannot vote for the amendment of the gentleman from Fayette, now pending, because, as I understand, he proposes to make it a sort of divided court—a dual court. We are to have a court of three judges, in the first place, to act as a court of appeals; and then a Supreme Court proper, who, as I understand it, are to be superior to that court of appeals, and, in certain cases, are to determine the causes which are brought before it. Now, Mr. Chairman, I do not think there is any occasion whatever for dividing the Supreme Court, or for distributing its labors between two courts. If I thought there was I should have been in favor, probably, of the intermediate court proposed by the majority, and one of the minority, of the Committee on the Judiciary; but I believe that our system of Pennsylvania jurisprudence, as now established, with additional help to the judges, is adequate to the discharge of the judicial work of the Commonwealth.

Mr. Chairman, it is true, beyond the power of successful contradiction, that in many of the judicial districts of this State the business is very far in arrear, and I believe it to be equally true that that business cannot be brought up by the present judicial force which we have in this State. Therefore I am in favor of relieving our courts of common pleas from a part of the burden which is now imposed upon them; and I proposed—for gentlemen have talked here of propositions which they made at different times in the Convention—and I did, at one time, make propositions myself with regard to this very matter, and one of those propositions was to institute in every county containing a population of at least thirty thousand persons, a probate court, in relief of the courts of common pleas. That probate court would relieve the court of common pleas of a large mass of the miscellaneous business of which I have already spoken, which is an obstruction in the way of the discharges of its other judicial duties. That probate court, taking the place of the register and of the register's court, and of the orphans' court, would discharge, economically, all their duties, with the services of one man as judge and one man as clerk, because it would not cost the counties one cent more, if as

much, to sustain that probate court as it does to sustain all these, with the fees turned into the county treasury, which are collectable by law on proceedings in those courts; and with that probate court established, you would relieve your courts of common pleas from a great deal of the burden which is now imposed upon them.

And, sir, I proposed to go one step further in what seemed to me a measure of reform, and that was that instead of the present board of county commissioners you should establish a county board, one member of it to be learned in the law, who should not only discharge the duties of the board of county commissioners as it now exists, but should discharge also the duties of the court of quarter sessions with regard to matters connected with roads, townships, the creation of boroughs, and other local matters of that character, and in that way you would take off from the courts at once a large portion of the burden which is now imposed upon them and which impedes their proceedings and the transaction of their business; and they being so relieved, the people of the county and of the several districts would have their judicial business transacted in a prompt manner, without denial or delay, as the Constitution of this State, in the Declaration of Rights, provides that it shall be done.

In that way I contend you would have a full administration of justice, and you would relieve the courts, further, of one of those things which is most calculated to degrade them and to bring them into connection with questions, the consideration of which and the disposition of which deprive them, to a large extent, of the consideration and respect of the community, for it is beyond question that these matters of local concern, these petty matters about the creation of townships and the laying out of roads, and things of that sort, are the very things which bring the courts into contact with a certain class of people with whom it is no credit to them to be brought in contact, and which draws upon the courts, unfortunately, the suspicion that they are controlled, more or less, by considerations which gentlemen here have so strongly denounced.

Those very things, small matters in themselves, are in the courts like local matters in your Legislature. They operate in the same way judicially as these local questions operate legislatively, and they do certainly tend to impair the con-

fidence and respect of the community in the courts and the judges who sit and administer justice in them. I do not say that it is justly so or unjustly so. I simply state what I am sure, from my observation and experience, is the fact.

Mr. Chairman, without delaying the committee further, I will simply state that I am in favor of so arranging, if it can be done, the election of judges, both State and district, in this State, that the minority shall be represented. I shall vote for that proposition in whatever shape it comes up, provided it is not connected with other matters which cannot receive my assent. It was that feature in the minority report of the gentleman from Fayette which attracted to it my approbation, and I was in hopes that I should be able to go with him all the way through on this subject, and to follow his lead; but on the pending proposition I cannot go with him. I cannot consent to the creation of an *imperium in imperio*—a second court inside of the Supreme Court. I want every question to go directly from the trial courts below up to the Supreme Appellate Court of the State without any interference, without any intermediate tribunal whatever. But, sir, if the gentleman from Fayette shall, in the further prosecution of this matter, present his proposition for the election of common pleas judges in the districts, in general accordance with the report which he made as one of the minority of the Judiciary Committee, I shall support that proposition, because I believe that it will be most productive of advantage to the public.

Mr. KAINE. I will say to the gentleman from York that I intend, at the proper time, to offer that proposition.

Mr. COCHRAN. I will most assuredly vote for it, if it is not connected with something which I do not approve.

The CHAIRMAN. The question is on the amendment of the gentleman from Fayette (Mr. Kaine.)

The question being put, the ayes were eight, not a majority of a quorum, so the amendment was not agreed to.

The CHAIRMAN. The question recurs on the section.

Mr. SHARPE. I offer the following amendment, to come in at the close of the section:

"The sessions of the court in banc shall be held at such one place as the Legislature may fix by law, and the judges of the said court shall reside at the place so fixed, but may for adequate reasons ad-

journal its sessions for a single term, or less than a term, to any other suitable and convenient place."

The CHAIRMAN. The question is on the amendment of the gentleman from Franklin.

Mr. MACCONNELL. I move to amend the amendment, by striking out the words, "such one place as the Legislature may fix by law," and inserting, "at the Capital of the State."

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny to the amendment.

Mr. CUYLER. If the gentleman will strike out the words "Capital of the State" and insert "Philadelphia," I will vote for it. [Laughter.] I move to strike out the words "Capital of the State," and insert "Philadelphia."

The CHAIRMAN. That is not in order. There is an amendment to an amendment pending.

Mr. CUYLER. Has the question been taken on the amendment to insert the words "Capital of the State?"

The CHAIRMAN. No, sir.

Mr. CUYLER. Is that amendment now pending?

The CHAIRMAN. That is the amendment now pending. It is an amendment to an amendment, and the question is on that amendment to the amendment.

The amendment to the amendment was agreed to, there being, on a division, ayes, thirty-seven; noes, twenty-eight.

Mr. WORRELL. That is not a quorum.

The CHAIRMAN. The question cannot be raised in that way.

Mr. WORRELL. I raise the question that a quorum has not voted, and that there is not a quorum present.

The CHAIRMAN. The question of a quorum cannot be raised in that way. The only way the question of a quorum can be raised is by the requisite number of gentlemen calling for a count.

Mr. WORRELL. Well, I call for a count.

The CHAIRMAN. The Clerk has counted and reports that a quorum is present. The amendment of the gentleman from Allegheny to the amendment of the gentleman from Franklin prevails. The question now is on the amendment as amended.

Mr. BIGLER. I suggest to the gentleman from Franklin that he strike out the provision about the judges residing at the Capital. What public necessity is there for requiring a judge to reside at a particular place? To require the court to be

held there answers the purpose of the public. I move to amend by striking out the words requiring the judges to reside at Harrisburg.

The CHAIRMAN. The amendment of the gentleman from Clearfield will be read by the Clerk.

Mr. SHARPE. I will accept the suggestion.

The CHAIRMAN. The modification is accepted. The amendment will be so modified.

Mr. DODD. I hope this amendment will not prevail, unless there is some good reason for it that I am unable to discover. It strikes me that the proper thing would be to make the districts smaller and give suitors in the Supreme Court an opportunity to be heard without traveling all over the State. In other words, it is cheaper for the court to go to the suitors than for the suitors to go to the court. If you bring the Supreme Court to Philadelphia I should have to travel to carry a case for my clients, four hundred and fifty miles. That would be an expense to the client which amounts in some cases to a denial of justice. I hope that no such amendment will pass.

Mr. D. W. PATTERSON. Mr. Chairman: I hope it will pass, and I know from having had conversation with several gentlemen of the present Supreme Court that they allege that they can do almost as much more work at home here in Philadelphia, where they have their offices and their libraries and their machinery about them, as they can do when traveling about to any other place where the Supreme Court is held, either Harrisburg or Pittsburg. That is the admission of gentlemen composing the present court; and I think if we make a permanent place and require the judges to reside there—or we need not so require them, because, as a matter of course, if you make it permanent at one place, you will find the judges would reside there—they would work much easier and accomplish much more and with less labor. As for the gentleman bringing his clients with him to the Supreme Court, and its being very expensive on that account, I do not think he has ever done it yet.

Mr. DODD. The gentleman will pardon me. I did not propose to do that, but clients have to pay my expenses when I come on their business.

Mr. DARLINGTON. I do not know where the judges could do most work. Judge

Rogers, I know very well, told me that that they could do more work by going around; that the change from place to place was advantageous. Judge Woodward's experience may be the same way, or it may be different; but if you should select a place where they should stay, let that place be where there will be the least quantity of eating done, and the most work will be done the less they eat. [Laughter.]

Mr. MACCONNELL. I would say to my friend from Lancaster that judges sitting at Harrisburg will have the advantage of the State library, which every one must see will be a very great advantage; and the bar going there to argue their cases will have access to the same library, which will be a very great convenience to them, and one which, I think, ought to operate on the minds of the legal gentlemen in this House.

Mr. CUYLER. Mr. Chairman: I do not compose part of that numerous body that the gentleman who has just spoken designates as "every one," for I do not see it in the light that he does. The State law library is a very good one; but not a whit better, and probably not as good as the law library in the city of Philadelphia, and there are several private libraries here that bear a very favorable comparison with it. So that I do not know that there is any advantage in that direction.

As to the remarks of the gentleman from Chester, I confess I do not understand them. I consider that the condition of a judge's stomach, his digestion, has much to do with the healthiness of his mind and the soundness of his decisions; and as for getting these judges in a place where they cannot eat good dinners and have good suppers, I do not believe in it for a single moment. I should consider whether a judge or any man whose soundness of opinion I desired to respect, was dyspeptic, in making up my mind whether he was a suitable man for the expression of an opinion. If his stomach was out of order, and he was dyspeptic, if he could not eat and enjoy a good dinner and a good supper, I should doubt very much whether he was in that healthy-minded condition that a judge ought to be. So I think that argument rather makes against the gentleman from Chester.

I move to amend by striking out from the amendment the words "seat of government," and inserting "city of Philadelphia."



The CHAIRMAN. The words have just been inserted, and an amendment to strike them out is not in order.

Mr. CUYLER. The amendment has been modified since then. There has been no vote had as to the city of Philadelphia. It has been simply a vote to write in the words "Capital of the State." I modify it by proposing to insert after the words, "Capital of the State," the words, "to wit, the city of Philadelphia." [Laughter.]

The CHAIRMAN. The Chair would likewise hold that to be out of order, as displaying ignorance of the geography of the State.

Mr. MITCHELL. Unless there is some pressing necessity for dragging the profession from the western part of the State to Harrisburg, I hope the courtesy of the Convention will be extended to the western members. We ask it as a matter of courtesy that we shall not be taken to Harrisburg, consuming our time, doubling our expenses, unless there is some necessity for it. If the gentlemen of the Convention will show me any necessity for it, then I shall vote for it myself; but otherwise, I beg of them to extend to us common courtesy and not drag us to Harrisburg.

Mr. GOWEN. Mr. Chairman: I am at a great loss to know how to vote upon this amendment. If I thought that this amendment was the stepping stone to securing the Capital of the State to Philadelphia, I should vote for the amendment; and if some gentleman from the west will give me an assurance on that question, I should like to vote for this amendment; but until the question of the permanency of the Capital is determined, it strikes me that this amendment should not prevail.

If it is necessary that there should be but one place at which the Supreme Court sits, evidently some regard to the convenience of the suitors ought to prevail. In 1872 the number of cases in the Supreme Court from the Eastern district was four hundred and thirty-three; from the Middle district, ninety-six; and from the Western district, two hundred and forty-nine. Therefore, if the court was permanently located at Harrisburg, in which district there were only ninety-six cases, the members of the bar intending to argue four hundred and thirty-three cases would have to leave Philadelphia and go to Harrisburg; and the members of the bar in the Western district, having two hundred

and forty-nine, would be obliged to leave their homes and go to Harrisburg; so that the counsel in six hundred and eighty-two cases would leave their district to accommodate those in ninety-six cases that go to Harrisburg.

Again, it seems to me that locating the court in one particular place is not a proper subject of constitutional enactment. You may have an epidemic raging at the particular locality. We all remember that it is only a year or two ago since there was something of the kind at Harrisburg, and if the court is fixed to one particular spot by the Constitution, it might present a very awkward question. I take it that if there is any one place in the State that is better suited than another, it is Philadelphia, for the reason that the greatest population clusters about Philadelphia, and the conveniences of getting from Philadelphia to counties within one hundred miles all around it are so great that many of the members of the bar from adjoining counties can leave their homes in the morning, argue their cases in Philadelphia, and return at night to their own homes.

I earnestly trust that in a House in which there is only one or two more than a quorum, this question of locating the court at a place at which there is not more than one-tenth or one-eighth of the business will not prevail.

Mr. KAINE. Will the gentleman allow me to make a suggestion?

Mr. GOWEN. Certainly.

Mr. KAINE. Although it may be very convenient for the members of the bar in Philadelphia, and those living in the counties immediately around it, to have the Supreme Court located here, I want him to remember that when this Convention came to Philadelphia to stay here the members from the country had very great trouble in getting places to stay. Now, can he give the members of the bar in the western part of the State any assurance that they will be any better provided when they come here to attend the Supreme Court, that they can get places to stay, than we had when we came here to attend the sessions of the Convention?

Mr. GOWEN. I do not think the ordinary run—if I may use the expression—of members of the bar are quite so fastidious as the members of this Convention. We can generally accommodate in the city of Philadelphia nearly the bar of the entire State.

But my principal objection to this is, first, locating the court permanently in one particular place by the Constitution; but, second, if that is done it ought to be a place which will accommodate the greatest number of suitors. My friend from the western part of the State is obliged to travel a great distance to get to Harrisburg. I know he would rather come to Philadelphia than stop at Harrisburg, and I think many of us would rather go to Pittsburgh than to Harrisburg.

Mr. CORBETT. I should like to ask the gentleman a question, with his permission.

Mr. GOWEN. Certainly.

Mr. CORBETT. I ask if he does not think that if the members of the bar had to go to Harrisburg to argue their causes, it would decrease the list considerably? [Laughter.]

Mr. GOWEN. I do not know. It would depend, I suppose, on the pockets of the suitors. I do not think the list ought to be decreased for any such reason as that.

Mr. WRIGHT. I am in favor of the proposition. I think there is something eminently proper in having the Legislature, the executive and the judicial departments all at the same place. If Philadelphia were the seat of government, I should be glad to come here. While Harrisburg remains the seat of government, I am willing to go there; but I think these three departments should all be in the same location.

There is something very pertinent in the inquiry put by the gentleman across the way in regard to the amount of business. There is a vast list in this city undisposed of; probably many causes are thrown into the Supreme Court to obtain delay, a sort of stay of execution. I venture to say that at least one-third of the causes from the city of Philadelphia would never find their way into the Supreme Court if they had to go to Harrisburg. I judge of that from my own experience. We have to go about one hundred and fifty miles, and it certainly weighs very much with a party who is disposed to appeal when he comes to count the necessary resulting expenses.

I am entirely in favor of the general practicability of having the three departments in the same location, and shall vote very cheerfully, therefore, that the sessions of this court in banc shall be held at the seat of government.

Mr. SHARPE. Mr. Chairman: As we are now engaged in fixing the judicial

policy of the State, my purpose in offering this amendment was to settle the policy that our Supreme Court should no longer be a peripatetic court, but that it should be fixed at one place.

Now, sir, the place which shall be established is a matter of detail which I think should be regulated by the Legislature entirely; but that it should be a fixed court at some one place is, I think, a principle of policy which ought to be settled in the organic law. Personally I am indifferent as to the location of the court. I would as soon come to Philadelphia as any other place; but I desire to have the court fixed so that when we want our judicial business attended to, we shall know exactly where to go, and exactly where we can find the judges.

For that reason, leaving the question as to the place entirely an open one, I desire simply to have the policy itself established that it shall be a fixed court at some one place, to be regulated by the Legislature hereafter.

Mr. D. W. PATTERSON. Mr. Chairman: Just one reason I should like to give why there should be but one place fixed for the Supreme Court; and I do not see how this committee can get over supporting that proposition if they have really spoken their sentiments in reference to the necessity and desire of relieving the Supreme Court of overwork.

I have been informed by gentlemen of the Philadelphia bar—I will not say members of this House—and also by members of the bar of the city of Pittsburgh, that, owing to the fact of the Supreme Court being very near them, they take up almost anything and everything to that court; and one or two of those gentlemen did admit to me that if the Supreme Court was not quite so convenient there would not be near so many cases taken up. I think that is evident; it must be manifest; and I have the confessions of members of both those bars to the truth of what I have said.

Now, if we really want to relieve the Supreme Court, it would go very far towards it if you fixed the permanent sittings of the court at Harrisburg, the present Capital of the State.

Mr. BEEBE. Mr. Chairman: I do not wish to take up the time of the Convention, but I cannot forbear to say one word. I have sat here and listened, hoping that all had been said that ought to be said in regard to this matter; but it seems to me that the personal convenience of the

Judges of the Supreme Court and the convenience of the bar have been the paramount interests here and the governing principles on the part of every man who has spoken.

Now, I ask if that is what the Constitution of the State of Pennsylvania contemplates? While it is convenient for men in the city of Philadelphia to take every trivial case into the Supreme Court and make it just as common as the circuit court, and just as cheap, I ask them to consider those who have just the same rights, that the courts are instituted and organized to protect, living hundreds of miles away. Consider the expense to them of coming here; and then will gentlemen say that thereby the principle of the Constitution is carried out? Does that secure that which we are sent here to do? Does it promote the welfare of the people and secure their rights to justice, speedy, convenient and cheap? That has been lost sight of in the consideration of this question in fixing the court at one place five hundred or six hundred miles from suitors, for the simple reason that there is plenty to eat and to drink and good living, &c., and a nice time for the bar to come here and share it with them at the expense of their clients. I ask if this is not a practical sale as well as a denial of justice, for the convenience of the judges and the financial interests of the bar. I apprehend that this Convention should get back to the principle which underlies this whole question, take it into consideration, and see that justice is and can be reached by the people of the remote parts of the State as well as those here.

Mr. BUCKALEW. I wish to ask one question of the gentleman proposing this amendment. I should like to know whether he intends to deprive the court of the power, which it now has, to order special sessions of the courts at particular points? That has been very often done, with the consent of counsel engaged on both sides of great causes—railroad cases and others. We have known the court to sit at Wilkesbarre, and various other points, between terms, especially in hot weather, when it would be inconvenient to sit at the regular place.

I should like to inquire, also, what the effect is to be in selecting members of the court? If the sessions of the court in banc are to be held exclusively at Harrisburg, and to be held there during the greater part of the year, although the amendment does not require it, yet indirectly it will

require that the judges shall reside there. I am afraid that putting these restrictions into the Constitution will tend to prevent a great many very competent and able men from taking nominations for the Supreme Court. There are a great many very able men in this State who would not consent to remove their families and reside at Harrisburg, or, in fact, remain there during the greater part of the year.

Mr. RUSSELL. That is stricken out.

Mr. BUCKALEW. I know; but if you direct the court always to sit there, and they cannot sit anywhere else—if they cannot even order a special hearing at another part of the State, at the request of all parties concerned in the litigation—you will make a seat upon the bench of the Supreme Court much less desirable than it is at present; you will deter competent men from taking nominations.

Besides, if there is any propriety, at any time, in fixing a single place, it can be done by legislation. It is not necessary to do it here. If that court thinks it proper that they should sit at one place, the Legislature may at any time pass a law for the purpose; and if a statute on this subject is found to be inconvenient, it can be changed, whereas the Constitution cannot be.

For these reasons I shall vote against this amendment.

Mr. ELLIS. I simply wish to add a single thought to that already thrown out on this question, that is, in opposition to fixing the permanent sessions of the Supreme Court at Harrisburg. We have all entertained the opinion that the judges of the Supreme Court have been, and will be, men of eminent ability and purity of character; but, after all, the judges of the Supreme Court are human, and if they are not entirely above the possibility of being reached, by placing their sessions permanently at Harrisburg, in close contact with "the third house" of the government, [laughter,] we may reach a period in our history when, although perhaps it may not be absolutely true that the Supreme Court may be reached or influenced, nevertheless there will be such juxtaposition between certain bills passed in the Legislature and certain other movements of "the third house," as sometimes to bring into disrepute the decisions of the Supreme Court.

Again, as the Supreme Court review the acts of the Legislature, and in some cases it becomes their duty to pronounce them unconstitutional, and as they are,

to that extent, a check upon the Legislature, I think some other place for their permanent sessions should be fixed than Harrisburg. For my part, I am not particularly tenacious about the place. Some gentlemen say it should not be in Philadelphia, because many cases here are taken up to the Supreme Court on account of the convenience; that it would be a great relief to the Supreme Court if they were taken to Harrisburg, because there would be a greater distance between the suitors and the courts. If there is anything valuable in that argument, it should certainly go further, and we should make the permanent sessions of the Supreme Court at Geneva. [Laughter.] I think that would have a decided effect in relieving the Supreme Court from the trial of so many causes.

The CHAIRMAN. The question is on the amendment of the gentleman from Franklin (Mr. Sharpe) as amended, which will be read.

The CLERK read as follows.

"The sessions of the court in banc shall be held at the Capital of the State, but the judges of said court may, for adequate reasons, adjourn its sessions for a single term, or less than a term, to any other suitable and convenient place."

The amendment was rejected, there being, on a division: Ayes, twenty-seven; less than a majority of a quorum.

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

Mr. J. R. READ. Let it be read.

The CLERK read as follows:

SECTION 2. The Supreme Court shall consist of seven judges, who shall be elected by the duly qualified voters of the State at large. They shall hold their offices for the term of twenty-one years, if they shall so long behave themselves well, but shall not be eligible to re-election. 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."

Mr. GOWEN. Will the chairman of the Judiciary Committee permit me to call his attention to the fact that there is no provision there for a case which has occurred with relation to Judge Strong and Judge Thompson, both of whose commissions expired on the same day?

Mr. ARMSTRONG. That is provided for in a subsequent section.

Mr. KATNE. I suggest to the chairman to insert, after the words "seven judges,"

the words "learned in the law," to conform to the usual language.

Mr. ARMSTRONG. I suppose that is so much a matter of course that it is hardly worth while to insert it. If it is the judgment of the House that there is the least ambiguity about it, I certainly have no objection; but I think it unnecessary.

Mr. MACCONNELL. That is provided for in another section, because it is declared that they shall have practiced at the bar at least ten years.

The section was agreed to.

The CHAIRMAN. The next section will be read.

Mr. ARMSTRONG. That is a long section, and, perhaps, it is unnecessary to read it inasmuch as it relates to the circuit court. I will move now to strike out the entire section, explaining, however, to the House, that the portion from the thirteenth to the seventeenth line, inclusive, I shall offer subsequently in another connection.

The CHAIRMAN. The Chair will suggest that the direct way would be to vote the section down. The third section is before the committee.

Mr. DALLAS. I move to substitute the following for the section:

"In all elections of judges, whenever two or more are to be elected for the same term of service, each voter may give his votes to a smaller number of persons than the whole number to be chosen, and the candidates highest in votes shall be declared elected."

Mr. BUCKALEW. I suggest to the gentleman to insert the words "of the Supreme Court" after the word "judges," so that the amendment shall be in keeping with its relations in this article, and that we shall not be precipitated upon the debate or consideration of the application of this principle to other judges. If, hereafter, the constitution of the common pleas courts shall be so made as to admit of it, a provision of more extensive character can be agreed to. I should like now to have, along with the increase of the number of judges of the Supreme Court and along with the decision of the Convention that they shall be elected, the principle contained in the amendment, that that court shall not be made partisan. In my judgment, therefore, the amendment ought to be confined to the one subject upon which we are now engaged, instead of going into the whole field of judicial elections.

The CHAIRMAN. Does the gentleman from Philadelphia accept that modification?

Mr. DALLAS. Giving notice that when the subject of the common pleas judges is more distinctly under consideration, I shall move the same amendment as to them, I am willing now to accept the modification of the gentleman from Columbia.

The CHAIRMAN. The modification is accepted.

Mr. ARMSTRONG. It occurs to me that it is not worth while to make two bites of a cherry. It means the same thing and it ought all to be embodied in one section, and so I understood this morning when the matter was incidentally referred to. There is a great question which this Convention must meet at some point, and I hope it will be fairly met and properly considered; and that is the question of cumulative voting, or free voting, or by whatever other name it may be called; but I do not want to see it come into the Constitution by piecemeal and a little at a time. Let us meet that question in its fullness when it arrives; but at the present time it would seem to me not to be wise to adopt a section providing for a certain mode of electing the judges of the Supreme Court, and then after a little while adopt another section providing the same means for electing judges of the courts of common pleas. When we reach an appropriate place in the Constitution, then let us vote upon such a section as will embrace the entire subject-matter and relate to both classes of courts.

Mr. DALLAS. If the gentleman will allow me a question, is not this the point at which he himself suggested it should come?

Mr. ARMSTRONG. No, sir; I suggested to the gentleman that it would be appropriate in connection with these lines; but I said to him in the same connection that I proposed to insert these lines as a new section among the general provisions, and there the gentleman's amendment would be appropriate.

Mr. BIGLER. I desire to get the floor to express about the views which have fallen from the lips of the gentleman from Lycoming; and I desire, in addition, to say that this form of electing judges ought to be incorporated, briefly, in some particular point in the Constitution, covering all the cases; and I anticipate a discussion, an earnest inquiry as to which of those two systems will prove to be the best, the limited vote or that proposed by my friend from Columbia. To me it is a very grave question, and I desire to look

into it carefully, and to hear it discussed. But, sir, I rose to suggest to my friend from Philadelphia that he withdraw this amendment, and allow the whole subject-matter to come up at the proper time. The question of whether the vote shall be a cumulative vote or a limited one is applicable not only to the election of supreme judges, but of the judges of the courts of common pleas also, in case it should be determined to provide for those elections in a form that will make this system applicable.

Mr. DALLAS. Whether or not, after hearing the subject fully discussed, I myself would be willing to have the principle of the free vote extended to the election of all officers of the State, I have not determined; but I am very clear that all judges in the State ought to be elected by some method which will give to minorities a representative upon the bench. Judges honestly—not dishonestly, but honestly—differ in opinion upon constitutional questions and upon every question of a political character, as a result of their association and education; and it is unfair to all that class of questions that a large portion of the community, it may be, but still a minority, should never have the voice of their views expressed from the bench of the Supreme Court or of the other courts of the State.

It was to meet this consideration that I offered this amendment at this place. My difficulty has arisen from an honest effort on my part to try to make the place of presenting this amendment and the form of its presentation suit all those who I supposed were its friends. My difficulty is that they do not agree. If I could find a general statement of opinion upon the subject of where this amendment should come in, and whether it should be made to apply to all the judges at once, or in the first instance only to the Supreme Court and subsequently be extended to the common pleas courts, I should certainly have no personal desire to resist a general wish on the subject. My own thought was, that being an entirely independent section, the question of the election of judges having been passed upon by an immediately preceding section, and the third section following being about to be stricken out, a very proper place to insert the section that I propose was in lieu of that section about to be stricken out. I also thought that there should not be two bites at a cherry, but that we should here establish the entire principle, not only as to the supreme

judges, but as to the common pleas judges. Without hesitation, yielding to the suggestion of the gentleman from Columbia, I accepted his modification, and made it applicable here only to judges of the Supreme Court; but as I understood from the gentleman from Columbia, it was satisfactory to him that the question should be raised here.

The objection then comes from the gentleman from Lycoming, (Mr. Armstrong,) that while he wanted it to come in connection with this section, he proposes now to transfer this section to some later part of the article; where, I do not exactly know; and the gentleman from Clearfield (Mr. Bigler) does not think this is the place to insert it. I can only say that I am perfectly willing to have the amendment brought up in any place in the article where the committee think proper, or that is desirable to all gentlemen here; but until there is some more general expression of opinion that this is not the proper place for it, I must hold to my own opinion, which is, that it should be considered right at this point.

Mr. BUCKALEW. It is not proper that general debate upon the political application of reformed voting should take place here. These judicial elections are not like the ordinary political elections of the country for members of the Legislature and for other officers, and therefore a proposed application of reformed voting to the choice of judges of the Supreme Court does not involve the general debate. It may be applied here without going into a great many considerations which apply to ordinary political elections. I spoke this morning of the general considerations which should apply to it.

As to the particular form of the proposition, whether it should be that now proposed by the member from Philadelphia or one similar to that adopted in the State of New York, to which the member from Clearfield has referred, I have to say that I am somewhat indifferent as to the form; and in the case of the election of two judges of the Supreme Court, there would be but little difference; the result would be in almost every case precisely the same. I am indifferent as to details.

What I desire is, that the Supreme Court in particular (and we are now confined to that subject) shall be the great court of the people of the State. I have been all the time strongly in favor of the election of that court, of having it a popular court. If I conceded the appointment

of any judges, it would be the local judges, who are subject to local disturbing influences in their nominations and elections. But I would have this court a popular court.

I do not know what the Convention may do hereafter with regard to the constitution of the courts of common pleas: Whether they will have the judges of those courts elected singly in districts, as most of them are now, or elected at successive intervals, so that each shall be chosen singly, in either of which cases reformed voting could not be applied; or on the other hand, will adopt the system of plural elections of judges of the common pleas, by which the application of some reform of this kind could be introduced—neither I nor any one else can now foresee. Besides, when we come to debate this question in connection with the constitution of the courts of common pleas, we will encounter a great many local feelings and interests which do not obtain with regard to the Supreme Court. For instance, if you propose some change in the mode of choosing judges in Philadelphia, you may encounter the interests of the judges now on the bench. So in regard to the county of Allegheny, and in regard to other districts.

I am content, in fact anxious, that we shall have some change in the manner of choosing the judges of the courts of common pleas; but I submit that it will be best and wisest for us to confine ourselves now to the question of choosing judges of the Supreme Court, in regard to which I imagine there will be almost a common opinion throughout the State that, as we are making these great changes, increasing the number of judges in that court, making their terms very long, and rendering them ineligible for re-election, we should secure this guarantee that that court shall not become a political court. This would attract, in my judgment, the attention and assent of the people throughout the State; whereas there may be differences of opinion with regard to the subordinate courts.

Again, as to the point to which the chairman (Mr. Armstrong) spoke; naturally he is desirous of maintaining, as far as possible, the framework of his report. From his official relation to it, it is natural to expect that; but I suggest to him, as he is not indisposed to this reform, that we now agree to the amendment as the member from Philadelphia has offered it, applying it only to the Supreme Court.

We are now in committee of the whole. This is the first stage, the preliminary action on this subject. Upon second reading, if this matter with regard to the subordinate courts should be acted upon and we should make some application of this reform to them, we can omit this section, or change it, and make it general. If there be a sentiment in this committee that, in connection with the changes we make in the Supreme Court, we shall make this reform as to their selection, is it not proper now that the committee should say so, and then hereafter the Committee on the Judiciary in re-framing the article, as I suppose they will, and the members in considering what is to come up on second reading, would adapt themselves to it. I hope that the chairman of the committee will concede this question as to time and manner and allow us to have action now.

Mr. CARTER. Mr. Chairman: I heartily concur in the remarks made by the gentleman from Columbia (Mr. Buckalew.) He has anticipated nearly all that I should have said myself if I had obtained the floor when it was awarded to him. I am in favor of the amendment of the gentleman from Philadelphia, (Mr. Dallas,) and I think, with all due deference to the gentleman from Lycoming, (Mr. Armstrong,) that this is the proper time and place to insert it. My reason for coming to this conclusion is, that what might be proper on this subject as applied to the election of supreme judges, might not be, perhaps, to the other judges. Nor do I consider it at all necessary that in voting for this amendment, as I shall do with very great pleasure and clearness in my mind as to its propriety, we shall be understood as committed to the adoption of the same principle, with regard to the election of members of representative bodies. The functions of judicial and legislative bodies are so distinct, they are and should be constituted in such a different manner, that what might be an eminently fit and proper manner of electing supreme judges might not be so fit and proper for electing members of representative bodies, where, perhaps, political opinions should be expressed or carried out. The Supreme Court should be constituted, as we are all aware, entirely distinct from any political preferences or views; and I see no other way in which it can be done except on the principle indicated by this amendment. Parties change from day to day; the party now

strong may soon wither and pass away; the State never dies. It seems to me so just and so proper that there should be a division of political sentiment in that august body, that I can scarcely understand any motive which any gentleman can have, or any view at least, in opposing a measure so just and proper as this amendment of the gentleman from Philadelphia is. I hope, sir, that it will prevail.

Mr. BIGLER. I desire to say that in the remarks I made on this subject, I did not intend to convey the idea that this reformed voting, as applicable to the judiciary, should necessarily be connected with the political elections of the country—far otherwise; and I think there are conclusive reasons why it should be applied to the judiciary which might not strike us with so much force with reference to political elections or elections for the other departments of the government. I was under the impression that the gentleman from Columbia would contend for the New York form, or the cumulative system, and that we should be led into a protracted discussion as between the limited vote and the cumulative vote or the free vote.

Now, sir, I am not only entirely willing, but I have long since determined, if I ever had the opportunity, to vote for one or the other as applicable to the election of judges. I am very decidedly in favor of such a system. It is unnecessary to present the reasons, which are perfectly clear and conclusive, I think, to every reflecting man. It had occurred to me, however, that the elections for judges of the courts of common pleas were likely to be thrown into a form where this principle would be applicable also, and that for that reason this provision should exist only in one point, to cover the elections of judges of the Supreme Court as well as those of the courts of common pleas. But, sir, standing as it does, I shall certainly vote for it if it is deemed best to put it in this section. It can be arranged, when the Constitution is made up, to occupy its proper place.

Mr. BUCKALEW. I should like to explain one point to the gentleman from Clearfield (Mr. Bigler.) In the election of two judges, which would be the ordinary case, in fact would be the first case that would occur under the new Constitution, it does not make any difference which form is used; the result would be the same. My idea is this: Say that you are electing these two judges at some

future time; the convention of each party will make a nomination of one, and only one, and then I take it for granted that the tickets throughout the State will be prepared with the names of both the nominees upon them, and nearly every voter in Pennsylvania will vote for both candidates. It will substantially come down to the matter of selecting them, and the members of the bar throughout the Commonwealth belonging to each of our great parties are always heard on that subject. They will in each case select a proper and fit man, and the State convention will nominate him. Then by arrangement between the State committees—it is unnecessary to go through the forms of dividing the vote—a common ticket will be voted for both judges; and I should like to have every man go upon that bench with the vote of every elector in the State for him, and I hope to attain that object. I believe in this way hereafter it can be understood in fact, as it is now in theory, that these are not political elections, that parties will have no division between them or among them in the actual voting with reference to judges. That can be obtained under the amendment of the gentleman from Philadelphia; but under the New York plan each party will be compelled to vote separately for its own man, and thus apparent antagonism take place at the elections.

For the reason which I have mentioned and one or two others, I would prefer the form which has been proposed by the gentleman from Philadelphia; but as the practical result of the election will be the same under either plan, I am not much concerned about the question of preference between them. I care little whether you take the one device or the other, or either of several others that we have had mentioned in this country and in Europe. The thing that interests me, and ought to interest every one else, is the result—the full representation of all the people in government, and, in the case before us, in the courts of the State. This is my explanation to the member from Clearfield of my reason for preferring the form of the present amendment to one which should embody the New York plan of the limited vote.

Mr. ARMSTRONG. Mr. Chairman: This amendment is ambiguous, difficult of interpretation. It provides that each voter may give his votes to a smaller number of persons than the whole. Is it intended by this that if there be two, three, four,

five or more candidates running at the same time, each particular voter, instead of voting his ticket A, B, C and D, may concentrate all his votes and cast his vote for the same person five times over? Suppose A, B, C and D, four candidates, are on the ticket. Instead of voting a ticket with four names, it would be a ticket which would run, "A, A, A, A," thus concentrating or cumulating four votes on one candidate. If that is what this section means, I apprehend it will receive a very great deal of consideration at the hands of this House before it will be adopted.

It is not the plain, perspicuous and clear expression which is used in the Constitution of the State of New York. They provide that "at the first election of judges under this Constitution every elector may vote for the chief and only four of the associate judges," although six were to be elected, thus providing a means of selection precisely analagous to that under which this Convention was elected, and to which, as a general proposition, I should give my assent, for I think it very desirable that there should be a minority representation in the court when it can be reasonably attained.

It is not proper at this time to enter into the discussion of this system of cumulative voting. There is very much to be said upon it, and I doubt very much whether it can be successfully applied to the Supreme Court except in the single case in which two or more will be elected at the same time. That is the extent of this amendment as the gentleman proposes it. Now, what I suggest is this: The House has already suggested to the chairman of the committee to prepare a new draft of this report, to be laid on the tables of the Convention on Monday morning. If the gentleman from Philadelphia will furnish me this, I will have it printed in connection with the lines which have already been brought to the attention of the committee as embraced in the ninth section, and when it is laid in plain form before the Convention in print we can take it up and discuss it. It will lose nothing by being postponed for one or two sections. It could come in appropriately at the end of the fourth section quite as well as it could here. This postpones the consideration of it for a very short time, and will place the whole matter before the Convention in such form that they can consider it with care.



Mr. DALLAS. Mr. Chairman: I accept the gentleman's suggestion. I am anxious that the vote should not be taken on this question, which I think a very important one, in so thin a House as we have now; and that it should have the opportunity for consideration which he proposes to give it, I withdraw the amendment for the present, and move that the committee rise, report progress, and ask leave to sit again.

Mr. ARMSTRONG. Before that vote is taken, inasmuch as the third section, I suppose, will be stricken out, the House of course understand that from the thirteenth to the seventeenth lines will be moved hereafter. With that understanding, I hope it will be voted down.

The CHAIRMAN. The question is on the section, the gentleman from Philadelphia having withdrawn his amendment.

The section was rejected.

Mr. DALLAS. I move that the committee—

Mr. ARMSTRONG. Let the next section be read before the committee rises.

The CLERK read the fourth section, as follows:

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 ground for impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature.

Mr. ARMSTRONG. 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 (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 on Monday.

#### LEAVES OF ABSENCE.

Mr. BUCKALEW. I desire to make a motion for leave of absence at this time.

Leave to make the motion was granted.

Mr. BUCKALEW. By request, I ask leave of absence for Mr. MacVeagh for a few days from to-day.

Leave was granted.

Mr. CLARK. I desire to ask leave of absence for Mr. S. A. Purviance, of Allegheny.

Leave was granted.

Mr. STANTON. I move that the House adjourn.

The motion was agreed to, and at five o'clock and ten minutes P. M. the Convention adjourned, to meet on Monday next at ten o'clock A. M.

## NINETY-SECOND DAY.

MONDAY, *May 5*, 1873.

The Convention met at ten o'clock A. M., Hon. W. M. Meredith in the chair.

The Journal of the proceedings of Friday last was read and approved.

DEATH OF MR. M'ALLISTER.

The PRESIDENT. It is with feelings of profound regret that the Chair announces the death, this morning, at half-past four

o'clock, of our late esteemed associate, Hugh Nelson M'Allister.

Mr. CURTIN. Mr. President: In the presence of such a public loss and private sorrow, I move that this Convention do now adjourn.

The motion was agreed to, and at ten o'clock and twenty-three minutes A. M. the Convention adjourned until to-morrow at ten o'clock.

## NINETY-THIRD DAY.

TUESDAY, May 6, 1873.

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

## PRAYER.

Rev. James W. Curry offered the following prayer :

Oh Lord, our Maker, we approach unto Thy presence this morning with hearts of sadness when we remember that death has once more entered our Convention and laid its hand upon one of our members. We recognize the dispensation of Thy providence, Oh Lord, in this event, as a lesson to teach us that we must die. Teach us that we are dying mortals, and shortly we too shall be called upon to exchange time for eternity. While our hearts are sad, we rejoice to know that he upon whom the hand of death has been laid was a man that feared God. While in the world his great object was to please Thee. During his pilgrimage in this life his great object was to glorify God that he might enjoy Him forever. We are glad that Thou hast said in Thy word to those who are troubled and cast down : "Let not your hearts be troubled ; ye believe in God ; believe also in Me ; for in my Father's house are many mansions ; if it were not so I would have told you ; I go to prepare a place for you, that where I am there ye may be also." This hope cheers our hearts amid the gloom of death. This hope consoles our hearts when we remember that Jesus entered the grave in mortal flesh and dwelt among the dead, and in the morning of the third day he rose again and ascended unto the Father, where He ever liveth to make intercession for us. We are thankful to Thee this morning, Almighty God, that we do not mourn as those without hope, and we rejoice that in Jesus Christ we can enter Heaven and immortal joys. We earnestly invoke Thy blessing upon the bereaved wife, and upon the children. Oh, be a father to the fatherless and a husband to the widow. Do Thou grant, Oh Father, to draw them by the cords of Thy love ; and may they look

unto Jesus, the fountain of all happiness, and may they so live in the world, may they so enjoy the rich benedictions of Divine grace, that when they too shall be called upon to pass the way of all the earth, they may meet that parent that has gone before them and enter unto his rest.

We ask Thy blessing this morning upon our assembling together. We pray for Thy blessing upon the exercises of this day. Be with us, Oh Lord, and teach us all to fear Thee and to work righteousness ; and finally, when we have done and suffered Thy righteous will here upon the earth, bring us all to enjoy Thy unclouded presence in Thine everlasting kingdom ; for Christ's sake. Amen.

## THE JOURNAL.

The PRESIDENT. Before the Journal of yesterday is read the Chair will state that his attention has been attracted to a resolution offered by the gentleman from Fayette (Mr. Kaine) on Friday last, and he takes the liberty of suggesting that the resolution be omitted from the Journal of that day, believing that the House will respond to the suggestion. The resolution referred to will be read.

The CLERK read as follows :

"Resolved, That the Committee on Printing are hereby directed to procure five hundred additional copies of the memorial of Col. Wm. Hopkins for the use of the members."

The PRESIDENT. On the question of proceeding to the second reading of this resolution, the question was determined in the negative ; and the Chair suggests that perhaps it would be better to omit the resolution from the Journal altogether.

Mr. KAINE. I have no objection to that. I move that that resolution be left out of the Journal.

The PRESIDENT. That motion requires the unanimous consent of the body. The Chair hears no objection ; the motion is agreed to. The Journal of Friday last will be so amended. The Journal of yesterday will now be read.

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

## DEATH OF MR. M'ALLISTER.

Mr. CURTIN. Mr. President: I offer the following resolutions:

*Resolved,* That with the most sincere feelings of unfeigned sorrow we learn of the death of Hon. Hugh Nelson M'Allister, a member of this Convention, who enjoyed the highest measure of respect for his learning and ability and esteem for his virtues.

*Resolved,* That his death deprives this Convention of one of its most enlightened and industrious members, the Commonwealth of one of her most public spirited and useful citizens, the community in which he lived of a man whose indomitable energy, inflexible integrity, and spotless moral character attracted to him the confidence and affection of all who knew him, and his family of a kind and devoted husband and father.

*Resolved,* That we do most heartily offer to the members of his bereaved family the homage of our sympathy and condolence in this the time of its deep distress.

*Resolved,* That in respect for the memory of our departed colleague the President is requested to appoint a committee of delegates to attend his funeral at Bellefonte on Thursday next.

*Resolved,* That the Clerk be directed to transmit a copy of these resolutions to the family of the deceased.

The resolutions were ordered to a second reading; and the first resolution was read the second time, as follows:

*Resolved,* That with the most sincere feelings of unfeigned sorrow we learn of the death of Hon. H. Nelson M'Allister, a member of this Convention, who enjoyed the highest measure of respect for his learning and ability and esteem for his virtues.

Mr. CURTIN. Mr. President: When we listened a few days since to the eloquent and just eulogies on the character and public service of William Hopkins, we did not suppose that in the wisdom of a mysterious Providence, the Great Destroyer would soon strike down another member of this body, a man quite his peer in all respects. In many of their characteristics—in their earnestness of purpose, in their integrity and their pure christian character—William Hopkins and Hugh Nelson M'Allister were wonderfully alike; and without any disrespect to the living, or want of knowledge of their learning or usefulness, it can be truly said that no two men could have been taken from this enlightened body whose services were of

more importance to its deliberations or whose loss will be more heavily felt in the communities in which they lived.

Mr. M'Allister, our colleague, was born in Juniata county, Pennsylvania, (then Mifflin county,) on the ninth of June, 1809, so that he was approaching his sixty-fourth year when he died. He was born upon the farm still in the possession of the family, upon which his grandfather settled, who was the second white man to settle in the Valley of Lost Creek, in that county. Spending his early life in ordinary labor on the farm, he received at a neighboring academy the preparatory education necessary for his entrance into college, and at the proper time he entered Jefferson college, at Canonsburg, Pa., where he graduated with distinguished honors. On his return to his home he entered as a student of law the office of William W. Potter, then the leader of the bar in the central portion of Pennsylvania. He completed his law studies in the law school at Dickinson college, under the charge of the late Judge Read.

When he had been admitted to the bar he returned to Bellefonte and commenced the practice of his profession. He had not to wait long for practice. He entered upon a lucrative business almost immediately on his admission to the bar, and from the day of his admission down to the time of his death he continued to enjoy a large and remunerative practice, the confidence of his clients and the respect and affection of all the people of that part of Pennsylvania who admired purity of character, integrity, energy and a freedom from all the arts and appliances which in modern times have detracted so much from the character of public men and defiled the politics of our time.

At the time of Mr. M'Allister's admission to the bar, Judge Burnside was upon the bench in the Fourth district. He was afterwards removed to a seat on the bench of the Supreme Court; and a distinguished and learned gentleman of this Convention, who has attained high eminence in his profession, became the judge of the district; and for ten years, the ten years of the beginning of his professional life, ten years of constant progress and of growing professional confidence, and of expanding views, as he grew to the full proportions of his distinguished manhood, he practiced before his Honor, Judge Woodward, who was then the president judge of the common pleas of his district.

Mr. M'Allister never held a public station until he appeared in this Convention. He had a distaste for public life. He never would condescend to the means by which public station is too often acquired. His was a life of labor and industry, and with the earnestness of purpose which attached itself to his professional character, which incorporated him with the rights and interests of his clients, which led him to intensify all the feelings of his nature on any public work in which he was engaged, in any private enterprise, or enlarged charity and hospitality, Mr. M'Allister could not from his nature be a politician.

But so great was his influence in the part of the State in which he lived, so entirely had he engrossed the confidence of the people in that community, that he could, at frequent periods of his life, have held public station if he had been willing. Over and over again he was solicited to ask for office from the people, and more than once his friends united in importunities to him to permit himself to be placed in judicial stations. Once, at least, during his professional life he refused to be the president judge of the common pleas of his district, and I know full well that there is upon this floor a gentleman who would have been only too glad if his friends had presented his name for appointment. I hesitate to say that the members of this Convention knew little of this man until he appeared amongst them, as a member of the body. I know, equally well, that it would be a more fruitful subject and more acceptable if I could speak of public works, of high official position, and the discharge of important political duties. I have no such eulogy on my dead friend. I can only speak of him as a true man, an honest, upright citizen, discharging all the private and relative duties to the public, to himself and to his family. I can speak only of his integrity, of his earnestness, of his purity; aye, more, I can speak of his devoted christian character. Mr. M'Allister was a true believer in the christian faith, and for many years of his life devoted much of his time to the affairs and welfare of the church to which he belonged and of which he was a ruling elder. It is a consolation to the surviving members of this Convention who were his friends to know that his accounts were settled, his peace was made with his God; and while we regret that a long life of suffering and ill-health has closed, and the useful and the good man has gone, we have the consola-

tion of knowing that there is no fear of his future rest and peace and happiness.

Many years since, when worn down by the constant labors of his professional life, Mr. M'Allister conceived the idea that, in harmony with the tastes of first pursuits, his health might be restored by turning his attention to agriculture. He purchased a farm in the neighborhood of Bellefonte, where he lived, and turned his attention to skilled agriculture. He made that farm the model for all the people of the neighborhood. He introduced the most approved scientific culture of the day, the artificial stimulus necessary to restore exhausted land, and the most improved implements of modern farming; and while he made that the most perfect model farm in the State, he improved the arts of agriculture in all the surrounding country, where there is a noticeable improvement in the manner of cultivation and increase in production, learned from the experience and experiments and skill of the lawyer-farmer who made agriculture merely the collateral of his professional life.

When Mr. M'Allister, with his zeal and his industry, became connected with practical agriculture, his views enlarged and he conceived the idea of establishing in Pennsylvania a school where farming would be taught as the chief part of a complete education, and to that man belongs the credit in a large measure of the establishment of, first, the Farm School of Pennsylvania, and now the Agricultural College; and while other men faltered and hesitated under disappointment, when that school would have failed over and over again, the energy and persistence of this man kept it alive, and before his death he had the satisfaction of seeing it in successful operation; and there is not to-day, in all this great Commonwealth, a more successful educational institution than the Farmer's College of Pennsylvania.

I speak of these things as the public works of the man. I speak of his character as a loss to the neighborhood in which he had lived and labored. I speak of his christian character and belief as an example to all men who are to follow him. This, Mr. President, is a public occasion, and this man died in a public place. It is fit that proper expressions of sympathy and regret should be made in this body, but it is, perhaps, no place and this no occasion to intrude private sorrow; and yet at the risk of an impropriety, I shall be permitted to speak of this man as my

friend. For many years I was not his equal at the bar, but his rival, and in all the struggles of an active professional life and amid the antagonisms which grow out of the trials which constantly occurred, rarely indeed was our constant friendship interrupted. With an inclination to attract men and a modicum of ambition for public life, I admired in this man just the opposite qualities. To have made himself Governor or President, our colleague, who is dead, would have never turned from his intensity of purpose, his settled convictions of public or private duty, or his well settled religious belief. In that respect I never knew the man's equal; and while it could not be said that he had the affection which more attractive and majestic qualities draw to the public man, he had the homage of the conviction in everybody who knew him, that he was a man of sterling integrity, of constant labor, of iron fidelity, and of a will which, fixed in a direction he believed right and true, never failed to carry with them the accomplishment of his purpose.

And this Convention will pardon me, even here, for the expression of my individual sorrow at the death of this good man; my heart goes out in sympathy to my neighborhood, in which he lived, where the people are in tears to-day, because they have lost their foremost and best citizen, and we are united in sorrow over his dead body.

Between humanity living and humanity dead there is but a moment. The tabernacle which held the spirit, made by God's own hand in his image, is no more; and the spirit has gone to settle a final account. Eulogy can be of no consequence. When the good man dies a void is felt in society where he lived; and we marvel at the mysterious Providence which takes away the useful, the charitable and the good. It is no time for praise; it is the time to make solemn resolutions to imitate the example which they leave behind them; and the good works and the purity of character, the fidelity and the integrity are benefactions the good man leaves to those who are to follow him. Treading in the examples thus set it is for those who live, when the Great Destroyer comes to them, to leave behind such a character and such works and such a blameless life, that the benefactions they receive from those who are gone before may be shed upon those who are to follow them.

Of such a character was this man. He has left us a life to imitate, and let us profit by such an example. For long as the people live in the blue mountains of Pennsylvania, long as there shall be a man who loves virtue and truth and integrity, there will be a fresh, green and beautiful christian remembrance over the grave of Hugh Nelson M'Allister, when he is forgotten by those who have only enjoyed his acquaintance for a time, and welcomed him to their councils when his health was broken and dissolution fast, alas too fast, approaching.

I am not in a condition to trust myself further. In youth, we separate from our friends with regret. At the spring-time of life, when all of the future is rose-colored, we soon forget the separations which death causes. Nature's laws invite us to the enjoyment of health and vigorous life. In large communities, where you enjoy the friendship of the many, the dropping away of a friend to-day, and to-morrow, makes but a ripple on the surface of public affairs or social life. Of the event we take little note. But when the man of the small community, of the village in the country, goes, all in that community feel the loss, and those who live, and enjoyed the small circle of intimate friendship and social relations, feel deeply the wound when death strikes down one—but one—if he was a useful and just man. I will be pardoned for my emotion, by those who live in the interior of the State, when I express so much feeling over the grave of H. Nelson M'Allister, who was my companion in life, my neighbor, and, higher and more to my memory, he was my friend.

Mr. BIGLER. Mr. President: Hugh Nelson M'Allister is dead. He died May the 5th, 1873, at No. 1104 Spruce street, Philadelphia, in the sixty-fourth year of his age, surrounded by members of his family and other friends. His great mind remained clear to the end; among its last efforts was to signify his faith and trust in the Savior.

He was born and raised in Juniata county, Pennsylvania, but has resided at Bellefonte, Centre county, for near forty years. Blessed with fine native abilities, and accomplished with a liberal education, he readily became a lawyer of note in his adopted home; and I think all who have known him well will agree that he was a character in himself, peculiar to himself; and that, as a whole, that character, so peculiar, was one approaching

the beauties of perfection. Men of similar characteristics are rarely met. His precise like I have never seen. In industry, restless energy, positive will, passionate devotion, dauntless courage, large benevolence and tender humanity, Hugh N. McAllister seldom, if ever, had an equal.

He was a member of this body, the only office or trust he ever held from the people of the State; and those who have witnessed his labors as a delegate, can form some idea of the part he performed in other departments of life. Sincere, earnest and conscientious, when once he espoused a cause he followed it up in season and out of season. Ceaseless vigilance in small things as well as great ones, was his habit. In his profession he was the same energetic, methodical and persistent worker that he showed himself to be in this body.

As a farmer—and he was one of the most learned in the State—he displayed these same characteristics in a high degree; so also when he performed his part as the foremost man, as he uniformly was, in enterprises and improvements to advance his town and section of the State. As significant of his energy and unselfish devotion, I mention the fact that in the summer of 1872, he left his clients, his farm and other interests, and went from Bellefonte to St. Louis to attend and address an agricultural convention, simply because he had taken the impression that he might say something that would be useful to the farmers of the west; and he readily became the leading spirit in that body, though it contained representatives from more than one-third of the States of the Union.

But in no other work of his life did the great characteristics of H. N. McAllister appear to so much advantage as in the discharge of his christian duties. As an elder in the Presbyterian church, representing his congregation in presbytery, he was uniformly in the lead of the clergy in everything with which it was proper for him to deal; he was full of suggestion, of work and devotion; so he appeared in the synod, in the general assembly, and so also at the great meeting that united the old and the new schools of the Presbyterian church. Becoming chairman of the board of sustentation of the Presbyterian church, he found opened before him a field for unselfish labor and charity commensurate, and only commensurate, with his enlarged desire to

carry forward the work of the Lord. The clergy of his denomination throughout the State bear willing testimony to the wisdom and high ability he displayed in the management of that work. He had unequalled ability to induce others to give of their means to the work of the church, and he possessed in an eminent degree the disposition to give abundantly himself. I shall excite criticism from no one in his section when I say that the private charities he has bestowed upon the needy, in number and in the aggregate sum, far exceed those of any other man in the interior of the State.

What a character! Always excitable, at times passionate, imperious and relentless, and yet generous, benevolent, compassionate and affectionate. As neighbor, husband and father, I believe his life was faultless.

How saddening the thought, Mr. President, that one so distinguished for intelligence and conscientious concern for the welfare of his country, will never again appear in this body. Let us be consoled with the belief that our loss is his gain, for "blessed are the dead who die in the Lord."

Mr. ALBRICKS. Mr. President: I beg leave to add a few words to what has been so well said in relation to the public loss which has converted the hall of this Convention into the house of mourning. I did not reside near Mr. McAllister, although I was born on the adjoining farm to that on which he was born, in Juniata county. I knew his manner of living from his youth up. He was reared on a farm, as you have been told, and his love for agriculture adhered to him till the close of his life. It can be said of him truly that he could raise two spears of grass where any other farmer on the same area of ground in Pennsylvania could raise one. There was no implement of husbandry, there was no plow or harrow, there was no reaper or mow-er, no pitch-fork or any other instrument of modern discovery, that he did not test himself. He was the model Pennsylvania farmer. I thought I knew something about agriculture; but I confess I was put to shame when I saw his farm, and the products of it.

You have been told that at an early day he went to Jefferson college, where he graduated with distinguished honors, and you have been informed with whom he studied law, Mr. Potter, and whom he succeeded in business. He was the same emphatic gentleman at the bar that you

found him in this Convention. He belonged to the positive school; but he was always controlled by right motives. He could have been upon the bench, but he declined the position. What can be said of him, can scarcely be said with the same degree of truth of any other lawyer in Pennsylvania.

The attorney at the bar and the judge upon the bench alike came down to take his counsel; and he never failed them.

He was the motive power in the church, in the Agricultural college, and in all benevolent enterprises of the day in his section of the State. He was a pillar of the Presbyterian church to which he belonged, and throughout the whole of that denomination of christians in this broad land he was looked to as a burning and shining light.

It will not be easy for us to supply his place in this Convention. You, Mr. President, gave him work enough for any ordinary man to do. He was on two of the most important committees connected with the Convention. He labored there with untiring zeal. I believe it was said of him truly that he never missed a meeting of a committee; and yet he was not satisfied. He went before other committees, and there, with all the zeal that he could command, he urged the adoption of those measures which he thought it would be proper to introduce into the fundamental law of this Commonwealth.

You, gentlemen, saw him, before he was stricken down, at his seat. You saw that he was impetuous as a mountain stream. He was anxious to stir up the heart of every member of this Convention to a sense of his duty to adopt proper reforms. He was at his seat denouncing those frauds which have brought such discredit upon our Commonwealth, and he fell beneath his labors. He had not the physical power that would enable him to do all that he thought it his duty to perform.

I presume, Mr. President, I might say that the admonition is to you and to me, and to each gentleman in this Convention:

"Our hearts  
Like muffled drums are beating  
Funeral marches to the grave."

Hopkins is gone; the man at my right hand is gone. Well may we exclaim: "Of whom shall we seek for shelter but of Thee, oh God, who at our sins art justly displeased."

Mr. ARMSTRONG. Mr. President: Once more the Convention stands in the imme-

diately presence of death. Another of our number has been called from the activities of life and the interests which engaged him to lie silent in the arms of the dread master, at whose bidding we all must go.

My acquaintance with the deceased, though personal and friendly, was not intimate. We were not often called into close relations, and I knew him far better in his reputation than from personal intimacy. For all the years of his long and active life he was esteemed by those who knew him best, as an upright, earnest christian man. He was distinguished for the zeal of his professional fidelity. The character of his mind was such that he espoused whatever interest he assumed to defend or urge, with an untiring industry which pursued his client's interest through its most intricate details. No weariness deterred him, no difficulties obstructed his pursuit which energy could surmount. The fidelity of his devotion gained him friends and clients and success. In this regard his reputation extended far beyond the limits of his county. His interest once strongly enlisted in a cause, or in a project of public or private importance, engaged him for the time almost to the exclusion of other pursuits. He was proud of his profession and of his professional reputation. His legal discrimination was acute, and his analysis of facts strong and clear. The integrity which so distinguished his life gave him strong hold upon the confidence of both the court and jury, and was a principal cause of the success which distinguished his professional career. He was an indefatigable worker, a safe counsellor, and an ardent advocate.

But he was scarcely less distinguished for his devotion to agriculture. Possessed of a large and beautiful farm adjoining the town of Bellefonte, where he lived, he applied himself with characteristic earnestness to its improvement. It became a model of neatness and excellence in all that could embellish or improve it. He was among the foremost to adopt and experiment with any implements that would lighten the labor of the farm, and equally prompt to test the value of whatever offered by way of improved varieties of grain or improved modes of culture. His experiments were conducted under his own immediate supervision, and the results noted with characteristic exactness. It is said that many able papers were contributed by him to the reports of the National agricultural department. With so fond a taste for agricultural pursuits, he



did not permit it to divert him from his chosen profession, and with whatever ardor it was pursued he did not suffer the pleasures of the one to interfere with the duties of the other.

With tastes thus naturally turning to the interests of agriculture it is not surprising that he should early have become the friend of systematic agricultural education. This taste grew upon him in his later years and became one of the sources of his purest enjoyments. In the development of these inclinations he became one of the most devoted friends of the Central agricultural college of Pennsylvania. And to him more than to any other person is due the establishment of that institution in Centre county. He was identified with the project from its earliest inception. He was liberal of his time and of his means in promoting its interests, and his devotion to all that could advance its prosperity became almost a passion of his life. His interest in it never flagged; his efforts in its behalf never faltered, and when in the vicissitudes of its fortunes it most needed friends, he was most ready to aid it; never despondent when its fortunes were adverse, he allowed no prosperity to check the carefulness of his guard, nor to betray him into any relaxation of his efforts to promote its interest. He was, I believe, a director of the institution through most, if not all, its history; and no inscription could more fitly adorn its walls than one that should perpetuate his devotion to its interests.

He was not ambitious of public positions; he pursued the even tenor of his life in the practice of the profession he had chosen, and the pursuit of such kindred pleasures as best advanced his domestic and personal happiness. The first public office he ever held was as a member of this Convention. He esteemed it to be an honor to be thus chosen, and applied himself to its duties with the same all engrossing earnestness which characterized his pursuit of whatever strongly engaged his attention. He prepared himself by careful and assiduous study to discharge his duties here with fidelity to the high trust he had assumed.

My fellow-members will confirm my testimony to the unselfish and self-sacrificing devotion with which he cast himself with all his energy into the work before us. His industry was untiring. The earnestness of his purpose and the ardor of his temperament forbade him to moderate his exertions to the measure of

his strength. With more confidence in his physical endurance than the measure of his years and his impaired health would justify, he labored on in the intense earnestness of his nature, until the Master called him from this scene of his busy and earnest and useful life.

I cannot forbear to further notice his christian character.

He was a member and an elder in the Presbyterian church for many years, and in all his church relations commanded the confidence and respect of all who knew him. He was liberal as a giver and earnest as a worker. He was a polished stone in the church. The crowning glory of his life was his devoted, consistent, humble walk with God. Such was his reputation; and it enfolded him like a robe of glory. To the vision of his faith this world was not his home. It was the field of his labor, the changing scene of mingled joys and sorrows. He lived in the conscious triumph of his faith. His life proclaimed him a christian, and he died in the faith he professed. It was the uniform expression of his consistent christian character.

This sad event is not without its admonition to the living. In the midst of life we are in death. To many here, advancing years proclaim the relaxing grasp on life. Twice within the short period of our mingling together, we have united our sympathies with those who mourn around the open grave of a departed colleague. Where next that deadly bow may wing its shaft, God only knows. May our faith be brighter and our lives purer for the admonition this bereavement brings. May it teach us, whilst we labor to gather prosperity around the State, that, in the midst of our activities, our ambitions and our cares, to lay up our treasure in heaven.

"This world is poor from shore to shore,  
And like a baseless vision,  
Its lofty domes and brilliant ore,  
Its gems and crowns, are vain and poor;  
There's nothing rich but Heaven."

"Creation's mighty fabric all  
Shall be to atoms riven;  
The skies consume, the planets fall,  
Convulsions rock this earthly ball;  
There's nothing firm but Heaven."

Mr. WOODWARD. Mr. President: Once more, an afflictive Providence reminds us that in the midst of life we are in death. Once more we pause in the active duties of life to think and speak of death. It is said the insatiate Archer loves a shining mark. He has sped his arrows at two of

our most distinguished and valued members. He has snatched away from us the two members, in the persons of Col. Hopkins and Mr. M'Allister, whom we could least afford to spare.

"The death of those distinguished by their station, But by their virtue more, awakes the mind To solemn dread, and strikes a saddening awe. Not that we grieve for them, but for ourselves, Left to the toil of life."

It was in the spring of 1841—thirty-two years ago—that I was sent to preside in the courts of the Fourth judicial district of Pennsylvania, consisting then of the counties of Mifflin, Huntingdon, Centre, Clearfield and Clinton, and there I first met Mr. M'Allister. He resided at Bellefonte, Centre county, but was growing into a large and lucrative practice in several counties of the district. For ten years he practiced law before me with great ability and success. I have never seen so laborious and pains-taking a lawyer. His great forte lay in the preparation of his causes. He never came into court unfurnished with evidence, if evidence could, with any amount of research and industry, be obtained to establish the facts of the case. Many ejectments upon original titles were tried in those ten years, and I have known Mr. M'Allister to give fifty or sixty warrants and surveys in evidence, to fix the location of the one tract in suit. He would sweep over a whole district of country and examine surveyors as to every mark in miles of lines, to verify the conclusions he wished to establish in the cause upon trial. In all lawsuits, but especially in ejectments upon original titles, the law arises upon the facts in evidence, and he is the most philosophical and successful lawyer who arranges his facts most fully, and places them before the court and jury in that orderly sequence which is most natural and logical. Perhaps I have known lawyers of more subtle reasoning faculties than Mr. M'Allister possessed, but I never knew one who could prepare a cause so well.

But he was not a mere lawyer. He took a lively and intelligent interest in all public questions, and when the State agricultural society was formed he brought into that the same methodical and earnest habits which had always distinguished him at the bar, and became a valuable member and manager of that useful institution. Very much through his influence the late General James Irvin was induced to give a valuable farm, in Penn's

valley, as the seat for the Farm school, which was established thereon and is still flourishing. In the erection of the college buildings, the conduct of the school and the farm, and, indeed, in all the expenses and labors incident to this great undertaking, Mr. M'Allister bore a foremost and conspicuous part. It is no exaggeration to say that, notwithstanding the munificent donation of General Irvin, (for which his name should be held in grateful memory,) the State would not have had the Farm school at the time and to the extent it was established, had it not been for the indomitable energy and perseverance of Mr. M'Allister. He had excellent co-laborers, among whom I rejoice to mention with affection, the late James T. Hale, but Mr. M'Allister was the master spirit of that enterprise, and to him more than to any, and perhaps, to all others, is the public indebted for one of the noblest institutions of our day. Not only a good lawyer, he was a good farmer; and what is higher praise, he was a good man. The church of Christ, education, and all moral and reformatory agencies and influences received countenance and liberal support from him.

Of his distinguished services in this body there is no need for me to speak. You wisely placed him at the head of our most important committee, and he addressed himself to his duties with an assiduity that was characteristic, but quite too much for his enfeebled health. What he recommended, by way of reform of the ballot, was gladly adopted by the Convention and will stand as an imperishable monument to his wisdom.

Mr. President, when I think of that picturesque and beautiful village of Bellefonte, and of the refined and intelligent society I found there in 1841, it makes my heart ache to think of the desolation death hath wrought there. There was John Blanchard, one of the noblest men it has been my good fortune to know, and Bond Valentine, a genial Quaker, and James T. Hale, a man of rare endowments, and James Petrikin, a lawyer, an artist and a wit, and James Burnside, who was everybody's friend and had a friend in everybody. These were the lawyers among whom Mr. M'Allister laid the deep and solid foundations of his professional character, and now they are all gone to that judgment bar before which we must all ere long appear. Bellefonte has, indeed, reason to mourn for such losses, and to

say, with old Jacob, "if I be bereaved of my children I am bereaved."

Mr. CARTER. Mr. President: Although standing here this bright May morning, amidst health and strength, I yet seem to feel in the shadow of a great sorrow, almost as if in the awful presence of the messenger of death. As the eldest member of the Committee on Suffrage, of which Mr. M'Allister was chairman, I would offer my brief tribute of respect to his memory and be permitted to say a few words expressive of the high regard I had for him, as a true, conscientious man, whose eye ever seemed single to his path of duty and labor.

I never knew him personally until we met in Harrisburg as members of this Convention, though I had often heard of the wonderful, persistent energy which he so long displayed in building up and sustaining an institution which he believed would be of great public benefit, and this, too, under all kinds of discouragements, and without hope of reward, other than that which follows the performance of duty. But being thrown much in his company last winter, I soon discovered him to be a firm, unflinching advocate of reform, and though by nature conservative, he ever seemed desirous to go any length to reform, or correct those abuses that had gradually crept into the government. His earnestness of purpose, and intense energy of character and zeal, could brook no barriers in his way. His industry was ever unflagging, and surely such a course is worthy of our praise, and such a character of our imitation. His end was, no doubt, hastened by his unwillingness to remain away from his field of labor. I often last winter felt it my duty to caution him of the danger of exertion in his weak state, but without avail. He had come here for an object; he had to work; his eye was single to that object alone. Methinks, sir, I see him now, as passing down the aisle, with his usual roll of papers in his hands, over which he had been engaged, perhaps, for hours, with his pre-occupied look and manner. Nothing but labor for him. Some men, Mr. President, pass through life, apparently without an object or purpose, seeking their own ease or sensual gratification, and totally indifferent to or unconscious of their responsibilities, and the field of duty their Creator had assigned them, not knowing that He had conferred on them the high privilege of being co-laborers with Him in the great work of elevating humanity.

How many engage in the pursuit of wealth as the great object of human existence, content to elbow their way through the world, regardless of the beautiful and refining influences which, if cultivated, would irradiate their path through life, and hallow its close; and never realizing that the true man should aim at leaving the world a little better for his having lived in it. Not such was our friend; to him duty was the pole-star of his life; honest, unremitting labor with unselfish end, his life course; always just and honest in intention, and a serious straightforward man at all times. Such is his character, and such his life, as described by his life-long friend, Governor Curtin. Such men are too scarce not to be prized and respected. But he is gone; his long, active life is ended; he has found the rest he has so well earned. The icy hand of death has stilled the throbbing pulse, and cooled the fevered brain.

"Life's fitful fever o'er, he sleeps well."

Soon his mortal remains will be borne to the silent tomb, at his distant home, by his sorrowing friends and neighbors, who knew his worth and lament his loss. There will he rest, amid the quiet, rural scenes he loved so well, and had done so much to adorn. May we all benefit by his example.

Mr. ANDREW REED. Scarcely have the habiliments of mourning which draped this hall, in memory of the late William Hopkins, been removed, when the announcement is made that another seat, in the same row, on the same side of this chamber, is vacant. H. N. M'Allister is dead.

Living as he did, in an adjoining county, and in the same district which I have the honor, in part, to represent on this floor, I feel that I would be false not only to the promptings of my own nature, but also to that sense of duty which would seem to require it if, on an occasion of this kind, I did not bear my testimony to his worth as a man, a lawyer, a christian, a neighbor and friend.

I have known Mr. M'Allister from boyhood. As a man, his chief characteristic, in my opinion, was that of untiring energy in the prosecution of conceived duty. Everything he undertook, whether in church, in State, or in his private business, received the attention of all his powers, both of mind and body. He was a positive man; there was nothing negative in his character. He formed opinions on nearly every subject which came before

him, and then clung to them with a persistency which could only arise from a settled belief in their right. These traits exhibit themselves in all the relations of his life.

As a lawyer he was distinguished for ability, integrity and assiduous devotion to the interests of his clients. The best energies of his life were spent in the service of his profession; a profession which has been well said "to be old as magistracy, noble as virtue, and necessary as justice."

As a christian he showed forth the same qualities of perseverance and energy which distinguished his labors in the law. Instead of observing just enough of the outward forms to give him the name, he was active, zealous and working. He attended upon all the ordinances of the church to which he belonged, and to its support, and the support of its different boards, he contributed with an unwonted liberality.

As a citizen he was conspicuous in the advocacy and support of all measures which tended to improve and benefit the common weal. As a neighbor and friend he was kind and true. A person with the qualities of Mr. M'Allister could not but make his mark on the community in which he lived and moved.

He was not an office-seeker. His temperament and habits had nothing in them congenial to the pursuits of the politician; while, if they had, his great devotion to the pursuit of his profession left no room for their exercise.

The election of Mr. M'Allister as a delegate to this Convention met with the approbation of not only the party with which he was connected, in the section of country where he was known, but of all parties. They knew that as far, at least, as he was concerned, neither party considerations nor anything else would induce him to swerve from what he considered to be the right, and the Journal of our proceedings will show that they were not mistaken in their man. His voice and vote will always be found on the side of that which tends to promote greater purity in the administration of public affairs.

He took great interest in the work of the Convention. When exhausted nature would have seemed to forbid it, we still found him at his post. But a few days before he died I was at his bedside, when he inquired of me what the Convention was doing, and when told that a certain

section of the judiciary report was under consideration, he expressed his regret at not being able to attend, and hoped that certain provisions to secure the independence and purity of the judiciary would be adopted. He is now gone. The Convention, the State, the church, the community in which he lived and his family will all feel and deplore his loss.

Mr. J. M. BAILEY. Mr. President: The second time has the silent messenger stolen in upon our deliberations, and has removed another of our number to that "undiscovered country from whose bourne no traveler returns."

While the visits of death are frequent, yet we never become accustomed to them, and always stand in awe at his presence; and terrible and full of warning as such visits always are, it is strange we heed them so little, and never fully realize their dreadful reality, until death's arrow strikes an object near to our own hearts.

In rising to second the resolutions so eloquently and feelingly presented by the distinguished delegate from Centre, (Mr. Curtin,) I desire, upon this melancholy occasion, to pay my humble tribute to the memory and worth of him who so lately was our associate here, but now is no more. Hugh N. M'Allister, *as a man*, was positive and earnest, honest and faithful, sincere and generous, assiduous and untiring in all he undertook—"whatsoever his hands found to do, he did with his might."

Among the bold and daring and heroic, he was as bold and brave as any. Among the faithful, he was as faithful as any. Among the wise and intellectual, he had as much wisdom as any. While his disposition was as gentle and unsuspecting and artless as truth herself, he was, when aroused in the performance of a duty; as courageous as a lion.

But, sir, whatever eulogies may be passed on him upon this floor, or whatever the biographer may write about him, no higher tribute can be paid to his personal character and private worth than this, *that he was the idol of his family*. Whatever a man may seem to the world—in whatever disguise he may be able to conceal himself from others—he is always exposed to his own family; if he be insincere, untrue or unkind, none know it sooner; and if he be honest and noble, their affection will attest it. And I would rather trust to such silent testimony to a man's moral worth, than to all the eulogies and panegyrics that could be pronounced.

*As a christian*—his virtuous life attested the sincerity and fidelity of his profession, as well as the power and goodness of the christian religion.

*As a citizen*—he was true and public spirited, and always encouraged and aided such enterprises as in his opinion would advance the material and social interests of his State and community; and to whatever project he laid his hand he pushed it with that assiduous effort and untiring perseverance and earnest vigor which was the secret of his success in life.

*As a lawyer*—he had no superior in central Pennsylvania; his unswerving integrity in his profession commanded the respect and confidence of every one. He was always courteous to his adversaries, true to the court as well as his client, and always having prepared his cause well by the dint of labor and study, he ably tried it. I say *his cause*, for he always made his client's cause his own. He never sought public position, but frequently declined it. Devoted to his profession he was satisfied with whatever of fame his skillful and successful practice might reward him, and with such remuneration as its faithful pursuit might bring to him. He never sought the people for anything, but the people sought him for all they have given him.

*As a member of this Convention*—none labored harder or with a more earnest and anxious desire to faithfully perform his duties. He was not working for fame—no man counted fame less than he—but the necessity of reform had so fastened itself upon his earnest and faithful nature as to allow him no rest from the labor which, as a member of this Convention, he had assumed. And no one can doubt, sir, that this excessive labor hastened his death; and of him it is literally true, that *he gave his life to his State*.

And now, sir, in concluding these hasty remarks, allow me to hold up as worthy of our imitation, the life of Hugh N. M'Allister, and point to the secret of his great success, which lay in his unswerving fidelity, in his christian life, in his indomitable energy, untiring labor and ever enduring perseverance, and point to this grand moral in it: *Never seek public position, and never shirk nor stint either a public or private duty*.

Mr. HARRY WHITE. Mr. President: I would gladly be silent if I were not conscious silence was not the performance of my duty. When the yeas and nays here-

after are called in our proceedings, the name of M'Allister will give no response.

"Like the dew on the mountain,  
Like the foam on the river,  
Like the bubble on the fountain,  
Thou art gone forever."

Our deceased associate was a man who "feared God, loved truth, and hated covetousness." He had attained this degree of excellence through years of earnest effort for a proper life. It has been properly said that he was one of our most upright, sincere, and industrious members. He has lost his life from a disease contracted in earnest and devoted attention to his duties in this body. There are those here whom we should, in the course of nature, have expected to precede him to "that bourne whence no traveler returns." You, Mr. President, and others, were his seniors in years. They have been left and he has been taken. Faithfully and well he performed his part in life. Now, at its close, his friends, and we his survivors, can stand at his open tomb and take an instructive retrospect.

A brief biography of his life has been appropriately and properly given by those who knew and associated with him in his useful career. In the place of his residence, a beautiful town nestling in the mountains of the State we are called here to serve, he had attained a prominence and excellence in his profession proper to be held before the young and before the ambitious at the bar. Shunning public life because he disliked the associations and jostlings necessary for success there, he did not shun public duty; a grateful relief from his professional cares, anxieties and conflicts was the occupation of the agriculturist. How happy he was when, upon his farm adjoining the town of his residence, he exhibited to his visitor the degree of cultivation of which the native soil was susceptible, and aided in giving proper encouragement to that employment the father of his country said "was the noblest occupation of men."

It has been my privilege, sir, more than once to partake of the liberal hospitality, at his home, of our deceased associate. When the delegates from the different parts of the State met at the town of his residence, near the location of the Agricultural college of Pennsylvania, the home of Mr. M'Allister was opened to all. It was the centre to which all repaired, and which every visitor left with regret. It was my honor and privilege, Mr. President, to be

associated for four years as a member of the board of trustees of the Agricultural college of Pennsylvania. I would be false to the recollection of those associations if I did not now pay proper tribute to his industry and usefulness, to his sincere devotion, to his earnest enthusiasm for the great work with which he was so intimately connected. Time and again, suffering from infirmities incident to approaching years, he left the comforts and quiet of his agreeable home to attend the meetings of the board, in a distant town. Time and again he visited the experimental farms located in different portions of the State, paying his own expenses, and refusing any remuneration for the contribution of his valuable time.

A more sincere man, a more earnest public servant, in any position he occupied, I never knew in my limited experience. It is said :

"The evil that men do, lives after them ;  
The good is oft interred with their bones."

We who knew Mr. M'Allister, who knew him as a lawyer, who knew him as an agriculturist, who knew him as a citizen, owe it to public virtue, owe it to private worth, to pay proper tribute to his memory.

Mr. M'Allister's death, it has been properly said, will create a void in the community in which he lived. No eloquence is necessary to impress this upon us. A void, sir, must be felt in that community, for which he had done so much. Missed! Yes, there he will most be missed. There he was known as the affectionate husband, the kind father, the christian gentleman. There he attained his professional eminence, and so great was his integrity that his statements were always accepted by the courts before which he practised.

His conflicts in professional life did not prevent the exercise, in his community, of his liberal and enterprising spirit. While our deceased brother had, in common with humanity, some peculiarities, yet in no sense was he a narrow or illiberal man. His was the voice of public improvement, and tireless hours of his life have been spent to aid the development and advancement of the resources and industries of the Commonwealth. As a citizen, then, no less than lawyer, husband, parent, friend, will he be missed at his home and all over our State.

Hugh N. M'Allister was indeed a great man, great because he never undertook without bringing success; he never em-

barked in an enterprise unless he gave it all the power and the stimulus of his great energy and intellect. Literally did he obey the scriptural injunction: "What thy hand findeth to do, do it with thy might." Yes, sir, Hugh N. M'Allister, our deceased associate, was in every sense of the term a great man, and in his death how natural to recall that sentiment of Longfellow :

"The lives of great men all remind us,  
We can make our lives sublime ;  
And, departing, leave behind us  
Footprints on the sands of time."

Mr. PATTON. Mr. President: When the Convention adjourned on Friday last, little did we think we should be called upon, so soon, to mourn the loss of an honored and prominent member of this body. But the unrelenting hand of death is no respecter of persons. The rich and the poor, the proud and the lowly, alike are in turn made the victims of its unerring aim.

It was my privilege and my good fortune to know Mr. M'Allister for many years. I have had the pleasure of meeting him at his home in Bellefonte, where he has long resided. But for the past few years I have not seen much of him. When, however, I met him in the Convention at Harrisburg, we renewed our acquaintance, and I was pleased to notice, in our intercourse, that his judgment was still sound, that his intellect was as fresh and vigorous as the day I first knew him, notwithstanding age had furrowed his brow and silvered his locks.

It has been but a few days since he was here in our midst, moving around in comparatively comfortable health, always to be found at his post of duty, looking after the best interests of his native State.

He was a close student, a gentleman of great experience and learning, of inflexible integrity, of great tenacity of purpose; a man of great industry—faithful and honest in the discharge of every trust confided to his care. Possessed of sterling honor, and a high sense of justice, he could not be swerved from the path of duty by any pretence, however plausible or alluring. He performed every duty with an honest purpose to practice and exemplify the virtues of a christian gentleman.

As chairman of the Committee on Suffrage, Election and Representation, he was an active and efficient member, and we all remember with what earnestness and power he advocated and explained the

report of the committee and urged its adoption.

But he has gone to the life beyond, and we have one member less than we had at our last meeting.

This Hall, which has so often echoed with the sound of his familiar voice, will be again draped in mourning, out of respect to the memory of our departed brother, and to remind us that death has again invaded our body, and summoned another worthy member to his final home.

Let us all prepare, then, for the great hereafter that awaits us, for but few decades will intervene before we in turn shall be summoned to follow.

Mr. LILLY. Mr. President: I rise in my place at the risk of being considered presumptuous, to add a very few words to what has been so fitly and well spoken in eulogy to the memory of our late fellow-delegate, H. N. M'Allister, for whom we mourn to-day as one lately passed away.

My personal acquaintance with him commenced at Harrisburg in November last upon the convening of this body. My knowledge of him extends to many years past, for a man of so much philanthropy must be known over the whole State that he has so greatly benefited by his self-sacrificing acts for the public good. I had the honor of a place upon the committee of this Convention over which he presided. From the time of the organization of the committee at Harrisburg until he was stricken by the disease that proved fatal to his life, no man could have been more faithful to his trust and to what he conceived to be his duty. Always at his post, ever zealous in the perfecting of that which was before him.

He was strong in his convictions—honest as the sun—when once convinced that he was right he would stand as firm as the eternal hills. I firmly believe he would have died for the faith that was in him.

For these stern and inflexible qualities I learned to respect and admire him as one of God's noblest works—an honest man. Peace be to his ashes!

Mr. PURMAN. Mr. President: This occasion—the death of Hon. Hugh N. M'Allister—is full of melancholy interest. It is not because it is new; for the annals of time are crowded with memorials of the dead, with repetitions of sorrows which know no end, and with renewals of anguish which continually find utterance upon the departure of the good, the wise,

and the great. The present event is another evidence of the general course of human experience. That youth, manhood and age drop into the grave in all the pride of their beauty, their power, and their brightest hopes. Such is human life.

It is but a few weeks since we were weeping over the death of that good, wise, and pure man and christian gentleman—Col. William Hopkins—an occasion which called forth all my sympathies for the afflicted family of the deceased, as well as the present. Doubtless it is in accord with the wisdom of Providence that human life should be held by so frail a tenure. We are not permitted to be insensible to the dangers that everywhere surround us. Providence intends that we shall be daily touched with the sense of human infirmity. In the death of this good man we learn again the salutary lesson that Providence has allotted to each of us his own sufferings; that there is no exemption of age, or rank, or station, but that there is a common doom appointed for all. As we feel the yet distant evils while administering to the calamities of others with a soothing kindness, let us improve the occasion to make us wiser, holier and better.

The life of our departed friend—Hon. Hugh N. M'Allister—has been one of toil and usefulness, both to his friends and the State. But death has consigned him to the home where he shall rest until that hour when it shall be declared that the dead shall live and that the living shall die.

I will not attempt to recount his virtues or recall his character.

What can I say that has not been already better said? What can I suggest which has not already been suggested, or suggests itself to your own hearts and to the hearts of his near and dear friends in a more touching form? We can look back upon the life of our departed friend with an approving consciousness. We can see everything to love and admire in his character, and nothing to awaken regret for intentional error so common in mankind. Such as he was we can bear him in our hearts and on our lips with manly praise. We can hold him up as a fit example for youthful emulation and ambition, not dazzling, but elevated; not ostentatious, but pure. His name can justly be breathed as a watch-word for honesty, while his public and private life will thrill as the oracles.

Mr. SIMPSON. Mr. President: There are moments in every man's life when the tongue refuses to perform its office, when it is meet that his voice should be still, as the fittest expression of his emotion; there are other moments when duty commands him to speak, or, as the Preacher says:

"To every thing there is a season, and a time to every purpose under the heaven; a time to keep silence and a time to speak."

Sir, I should feel that I had failed in the performance of a duty if I were to remain silent at a moment as solemn as this is, whilst others were bearing their testimony to the worth and faithfulness of our deceased brother, if I, too, did not present my tribute and lay one leaf of laurel upon that open coffin.

It was my fortune, Mr. President, to have made the acquaintance of our lamented fellow-member, some sixteen years ago, whilst attending court in one of the counties composing the section of the State where he lived; that acquaintance was but a casual one, however, and probably never would have been more than that, but for the occurrences that brought us together again as members of this body.

You, Mr. President, deemed it proper to place me upon the committee of which he was the honored head, and it was there, in the committee room, or in his chamber, discussing and preparing business for the consideration of the committee, or the Convention, that I became impressed with his untiring energy, his earnestness, and the zeal that he brought to the discharge of his duties; and it was there, too, that I learned how entirely, how devotedly he brought every faculty of his mind to bear upon the important questions before the committee, nothing too great for his grasp, nothing too small to escape his scrutiny.

Differing from him, as I did, upon some of the questions that we had to consider, it is but proper that I should say that the fidelity and integrity displayed by his earnest advocacy of such measures as he deemed important in the cause of real reform, convinced me that his convictions were honestly entertained, and that he at least was impressed with the thought that the labors of the Convention, whether performed upon this floor, in the committee room or elsewhere, were no child's-play, no mere holiday pastime; every source of knowledge open to him was penetrated, I might say ransacked, to obtain information bearing upon the subject specially

committed to his charge, yet he did not forget those in which all had a common interest. Few of the members of this Convention were his equals in diligent search for light; none, I venture to say, his superiors.

But, Mr. President, this second invasion of our circle should remind us "that it is appointed unto man once to die;" sooner or later the summons will come to each of us; none are too exalted to escape, none too lowly to be overlooked or forgotten. We shall be commanded to lay aside this mortality and put on immortality, and whether we are ready or not, whether our work is done or undone, the summons must be obeyed. Like the patriarch of old, like our brother whom we mourn, may each of us have his loins girded, his sandals bound upon his feet, and with staff in hand be ready to enter upon that journey from which there is no return. May we have "our lamps trimmed and burning," so that when we are called it shall be from labor to reward; and that it may be said of us, as we can say of our departed friend and brother:

"Let Faith exalt her joyful voice,  
And now in triumph sing;  
O Grave, where is thy victory?  
And where, O Death, thy sting?"

Mr. W. H. SMITH. To me, Mr. President, this dispensation has been peculiarly impressive. The lamented delegate from Washington, the honest and earnest Mr. Hopkins, sat here on the right, and Mr. McAllister sat on the left of my seat, but one chair removed from my own. Owing to the occasional absence of the delegate from Franklin, I was brought into very frequent intercourse with our last departed co-laborer. And although I never met him but once before I found him here, and know but little of his character or antecedents, I have been impressed with his unflinching constancy, and firmness in maintaining what he considered to be right. His labors in this body, and in the committees on which he served, were untiring, and I am informed that his anxiety about our progress here and its final results, were intense, and without intermission. Like Mr. Hopkins, who only a few weeks ago preceded him on the inevitable journey "to that undiscovered country," he entertained the homely and primitive sentiment that to hold public office was not a privilege only, but a privilege that was associated with a high responsibility. Whoever may have been neglectful of duty, or faithless to



their official obligations, among the many servants of this great Commonwealth, it may be emphatically said of Hopkins and M'Allister: that they were eminently faithful—faithful even unto death. I might go even yet further, Mr. President, and say that he who has just left us has sacrificed his health and life to extraordinary labors here. Indeed, we may suppose that the lives of both these good and exemplary men might have been prolonged for much usefulness if duty here had never been undertaken by them, or if their part had been performed in an inattentive or casual way. To each or either of them the State may say with unreserved approval of their labors, "well done, thou good and faithful servant," and to all that remain, "let your official course and conduct be like theirs."

Mr. STANTON. Mr. President: In the death of our much-honored and esteemed colleague, the Hon. Hugh N. M'Allister, of Bellefonte, our Convention has lost a most useful member, and Pennsylvania a son whose life and character have been to her "an honor and a pride."

His unexpected death—unexpected, at least, to many of us—has cast a gloom over our proceedings, a shadow over the pleasant relations existing among us, which time alone can dispel. Few men ever gained more friends in so brief a period as did the lamented departed while in our midst.

His amiable disposition, gentle manners, good qualities, and manly, honest bearing, endeared him to all with whom he came in contact. He was a man of extraordinary energy, and of a virtue of character which commanded universal respect and admiration. Beloved and honored at home, esteemed and revered abroad, his death, in the midst of his usefulness and valuable services, has caused a vacuum not easily filled. As chairman of the Committee on Suffrage, Election and Representation, he proved his great ability, extensive knowledge, and thorough honesty of purpose in his aim to serve the interests of the people of our Commonwealth. He was also an invaluable member of the Committee on Railroads and Canals, and whenever duty required, his voice was heard on every important measure which had come before this Convention up to the hour when the grim monster, laying his hand upon him, bade him to come up no more to this place. But he is gone from among us. His seat is va-

cant, and his strong voice is hushed forever.

"Leaves have their time to fall,  
And flowers to wither at the North-Wind's breath,  
And stars to set—but all,  
Thou hast all seasons for thine own, O Death."

We who mourn his loss can the more readily sympathize with those to whom his death will involve many a day of sorrow which time alone can alleviate, and religion alone can reconcile. To these bereaved ones we sincerely extend our sympathy; feeling, also, that they have the consolation to know that their beloved departed had lived a life honorable to himself, his family and his State, and in the fear and service of his God. He was truly such a man as the poet had in mind, when he said,

"Man is his own star: And the soul that can  
Render an honest and a perfect man,  
Commands all light, all influence, all fate;  
Nothing to him falls early or too late."

Mr. MANTON. Mr. President: Standing in this Hall as I do this morning, I desire to say but one word on this solemn and important occasion. I cast my eye on this side of the hall, and I see two seats which have been made vacant by death, and all within a very brief period of time—a few days at most. Two delegates in the active pursuits of life have been called away, one whose eulogy has already been pronounced by nearly a score of delegates on this floor. The words they uttered here are implanted in all our hearts. We then said, one to another, who next? This inquiry is well made, if we remember that *sacred declaration* that "there is but one step between thee and death." We all thought then as we now think, and as no doubt our worthy associate thought, "it is not I but you, or some one else;" but it was not you nor I, but it was he, who thought as we thought then. But the grim messenger came, and by his never-failing word, has beckoned his victim home, and we can say to-day in our own hearts, *who next?* It is *you or I*. It may not be this day or to-morrow, but the separation will come. It may be in the morning or the evening time that we shall be called from the toils and cares of life to the better land beyond.

It is hard, it is unfortunate, to lose a friend like Mr. M'Allister. I became acquainted with him at an early stage of this Convention. I watched his movements; I saw his anxiety to do his duty, and more than once did I admonish him that he was overtaxing his system with

the care that he was bestowing on his part of the work of this Convention, and his reply to me was: "*I wish to do my duty and to do it well.*"

Such seemed to have been his most anxious thought, and from this standpoint he seemed always to be acting. But, sir, we all know that he has died with the harness on, died a true man, whose life of industry we can safely imitate. This Convention can ill afford to lose him; but then he rests in peace. No more shall life's troubled ocean toss his frail bark, and as we bid him a final farewell, we can say:

"Unveil thy bosom, sacred tomb,  
Take this treasure to thy trust,  
And give these sacred relics room  
To slumber in the silent dust.

Nor grief, nor fear, nor anxious care  
Invade thy bounds. No mortal woes  
Can reach the silent sleeper there,  
Where angels watch his soft repose."

Mr. COCHRAN. Mr. President: I should have no warrant to interpose in the bestowal of these memorial tributes to the distinguished delegate at large from the county of Centre, were it not for the fact that he was a member of the committee of which I had the honor to be chairman by your appointment. I think it is proper for me to bear testimony here to the great earnestness, zeal and fidelity with which he labored to discharge his duty upon that committee. Day after day he was assiduous in his attendance, and even at a time when sickness would have prevented almost any one else from laboring, he came to the committee room and gave us the benefit of his counsel and his services.

Mr. President, we had every evidence to satisfy our minds of the perfect integrity and the full sincerity with which he entertained the opinions that he expressed, and advocated the measures that he preferred. He was indeed a man *justus et tenax propositi*, a man who was firm and devoted in his purpose, and unswerving in the vindication of that which he believed to be right. It was most grateful, sir, to agree with him in opinion, because we knew that when we agreed with him we had the concurrence of a man of sound judgment and of single honesty of purpose. Opposition in opinion to him seemed to stir one with an emotion resembling

"The stern joy which warriors feel  
In foemen worthy of their steel,"

for he met contest of opinion fairly and squarely, and encountered those who differed from him face to face.

Sir, that was the characteristic of Mr. M'Allister in his connection with the committee of which I have had the honor to be chairman, and I think there is no member of that committee who will not say that these few words which I have uttered here are a simple and just acknowledgment of his merits and of his services among us.

Mr. President, his labors on earth with us are ended; but we have the consolation to confidently believe that he has departed to a higher sphere of reward above. We have a right to entertain "the reasonable, religious and holy hope" that "for him to depart was for better," while his departure is indeed to us a loss which we have the greatest reason to lament.

Mr. MANN. Mr. President: When a good man dies the people mourn, and it is fitting and proper that his associates and companions should commemorate his virtues over his open grave. I know how difficult it is to speak with profit on such an occasion; and therefore I shall trust myself to utter but very few words.

I have only to say that the body of Hugh N. M'Allister is dead, but his example still lives, and will long live to bless the community in which he resided, and the State of which he was an honored citizen, for, if it may be said of any man, it may truthfully be said of him, that he was one of the noblest works of God, an honest man. Out of respect for his memory, therefore, I now move that the Convention take a recess until three o'clock. ["No!"]

Mr. DARLINGTON. Let us take the question on the resolutions first.

Mr. MANN. I withdraw the motion until the question is taken on the resolutions.

The PRESIDENT. The question is on the resolutions of the gentleman from Centre. The second resolution will be read.

The second resolution was read, as follows:

*Resolved*, That his death deprives this Convention of one of its most enlightened and industrious members, the Commonwealth of one of her most public spirited and useful citizens, the community in which he lived of a man whose indomitable energy, inflexible integrity, and spotless moral character attracted to him the confidence and affection of all who knew him, and his family of a kind and devoted husband and father.

The resolution was adopted.

The next resolution was read the second time, as follows:

*Resolved*, That we do most heartily offer to the members of his bereaved family the homage of our sympathy and condolence in this the time of deep distress.

The resolution was adopted.

The next resolution was read the second time, as follows :

*Resolved*, That in respect for the memory of our departed colleague, the President is requested to appoint a committee of — delegates to attend his funeral at Bellefonte, on Thursday next.

The PRESIDENT. There is a blank in this resolution. How shall it be filled?

Mr. CURTIN. I suggest seven.

The PRESIDENT. Seven is named. If no other number is named, the blank will be filled by seven. The question is on the resolution.

The resolution was adopted.

The last resolution was read the second time, as follows :

*Resolved*, That the Clerk be directed to transmit a copy of these resolutions to the family of the deceased.

The resolution was adopted.

The PRESIDENT. It will be entered on the Journal that these resolutions were unanimously agreed to.

Mr. BUCKALEW. I ask leave to make a report from the Committee on Suffrage, Elections and Representation.

The PRESIDENT. The Committee on Suffrage, Elections and Representation ask leave to make a report at this time. Shall the committee have leave?

Leave was granted.

Mr. BUCKALEW. Mr. President: I report the resolutions adopted by that committee in reference to the death of their chairman.

The PRESIDENT. The resolutions will be read.

The CLERK read as follows :

In the Committee on Suffrage, Elections and Representation, May 6, 1873, the following resolutions were unanimously adopted :

*Resolved*, That the members of this committee have heard with deep sensibility of the death of their chairman, H. N. M'Allister, of Centre county, who has fallen at his post of duty, leaving an honored memory among all his colleagues of the Convention.

That his death may be justly regarded as a public loss, and to all of us who survive him, it brings sincere sorrow and regret.

That we desire to bear willing testimony, that in the transaction of business by

the committee, and in his relations thereto, their late chairman always exhibited untiring industry and earnestness, zeal for the right, and a sincere desire to reform all existing abuses in government.

*Resolved*, That the acting chairman of the committee be desired to present the foregoing resolution to the Convention, with the request that the same be entered upon the Journal, as a fitting tribute to the memory of the deceased.

Mr. BUCKALEW. I move an order that the resolutions reported be entered on the Journal.

The motion was agreed to.

Mr. MANN. Mr. President: I now move, out of respect to the memory of Mr. M'Allister, that we take a recess until three o'clock.

Mr. CHURCH. If the gentleman will withdraw that motion a moment, I have another resolution which I should like to offer.

Mr. MANN. Very well.

Mr. CHURCH. I move that, as a further mark of respect, the Chief Clerk be directed to drape this Hall in mourning for the space of thirty days.

The PRESIDENT. The question is on the motion just made.

The motion was agreed to.

Mr. MANN. I renew my motion for a recess.

The motion was agreed to, and at twelve o'clock and eight minutes, 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. RUSSELL. Mr. President: I move that the Convention resolve itself into committee of the whole, for the further consideration of the report of the Judiciary Committee.

The motion was agreed to, and the Convention resolved into committee of the whole, Mr. Harry White in the chair.

Mr. ARMSTRONG. Mr. Chairman: In pursuance of suggestions made on Friday last, the Committee on the Judiciary have had their report re-printed, leaving out all that portion relating to the circuit court. One or two other alterations have been made in the arrangement of the report which are supposed to be necessary by reason of the changes which were made in striking out that portion relative to the circuit court. What in the old re-

port was the fourth section, will now be found as the fifteenth section on the sixth page of the re-print. I would suggest, for the convenience of the committee, as it will probably save much time, that by unanimous consent the re-print be substituted in place of the first print, and that we proceed to what is the third section of the re-print, which embraces the jurisdiction of the Supreme Court.

The CHAIRMAN. The delegate from Lycoming suggests that by common consent the re-print made under the supervision of the chairman of the Judiciary Committee be substituted for the report of that committee as found upon our files. Unless there is some objection heard by the Chair, such substitution will be made. The Chair hears no objection. Copies of the re-print are on the desks of the members. The question then is upon the third section, which will be read.

The CLERK read as follows:

#### JURISDICTION OF SUPREME COURT.

SECTION 3. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery, in the several counties. They shall have original jurisdiction in cases of *habeas corpus* and *mandamus*, and in cases of *quo warranto*, as to all officers of the Commonwealth whose jurisdiction extends over the State, and in revenue cases in which the Commonwealth is a party; but shall not exercise with any other original jurisdiction. They shall have appellate jurisdiction by direct appeal, *certiorari*, or writ of error in all cases, as is now or may hereafter be provided by law.

Mr. ARMSTRONG. Mr. Chairman: I move to amend in the fifth line by adding the letter "s" to the word "case," making it read "all cases;" also to amend in the fifth line by inserting after the word "*mandamus*" the words, "to courts of inferior jurisdiction." The committee will observe that it is the intention of the Judiciary Committee to restrain the original jurisdiction of the Supreme Court as far as practicable. All courts ought to have the right to issue writs of *habeas corpus*. The writ of *mandamus* to inferior courts is also a necessity, and writs of *quo warranto* as to the officers of the Commonwealth whose jurisdiction extends over the State. The purpose is to exclude jurisdiction in cases of *mandamus* as to officers of corpo-

rations or as to the smaller divisions of the State, the counties and the cities.

Mr. HUNSICKER. In the seventh line the word "with" should be stricken out.

Mr. ARMSTRONG. That is a mis-print.

The CHAIRMAN. The question is on the amendment of the gentleman from Lycoming.

The amendment was agreed to.

Mr. J. N. PURVIANCE. Mr. Chairman: I move to strike out, in the sixth and seventh lines, the words, "and in revenue cases in which the Commonwealth is a party." I will remark to the committee that revenue cases would occupy a large share of the time of the Supreme Court, if they have original jurisdiction. I recollect very well, in 1849, an act of the Legislature was passed giving to the court of common pleas of Dauphin county original jurisdiction in all revenue cases. The result was that that court was occupied some six months in the trial, exclusively, of revenue cases. Now, as the Supreme Court is overburdened, and we desire to grant it all the relief in our power, I see no necessity for our encumbering that tribunal with revenue cases. Let them be tried in the inferior courts, and go up, for the correction of errors, to the Supreme Court, as all other cases. They may be very numerous. It often does occur that they are very numerous. All the public offices in the State are embraced in these revenue cases. Sometimes hundreds of those cases are brought in Dauphin county. The common pleas of Dauphin county has the jurisdiction of such cases. I therefore suggest that those words be stricken out.

The CHAIRMAN. The specific amendment offered by the gentleman from Butler (Mr. J. N. Purviance) is to strike out the words, "and in revenue cases in which the Commonwealth is a party."

Mr. COCHRAN. It seems to me to be perfectly proper that that amendment should be made. The revenue cases most generally originate by appeal from the settlement of accounts by the Auditor General and the State Treasurer.

Mr. J. N. PURVIANCE. Sometimes they are original cases.

Mr. COCHRAN. And sometimes there may be original cases on a bond filed in some of the departments. Now, sir, the practice has uniformly been, according to my experience, that the exceptions to those settlements are filed in the office of the Auditor General; the appeal is taken from that office to the court of common

pleas of Dauphin county, and there the cases are heard and tried, the Attorney General representing the State and filing a declaration, and trying the case as in ordinary proceedings at common law, or an appeal from a settlement by the accounting officers of the State. I do not think, to the best of my knowledge and information, that there has been any original jurisdiction exercised by the Supreme Court, in cases of that character, for years past. I at least remember of none. None occur to my mind at this time.

I think it is very important that we should reduce as far as possible the original jurisdiction of the Supreme Court, and confine it simply to those cases in which it is absolutely necessary that it should exercise an original jurisdiction. Now, I apprehend that this provision which the gentleman from Butler moves to strike out, would have the effect to enlarge the jurisdiction now exercised by the Supreme Court, instead of diminishing it. I hope, therefore, that the committee will strike out this part of the section, and let those cases come before the court of common pleas of Dauphin county, which has now the jurisdiction to try all those cases in which the State is a party, that is, originating by appeal from the settlements of accounting officers, and other cases likewise in which the Commonwealth is a party, and has the right to send its process into all counties of the Commonwealth.

Mr. ARMSTRONG. The committee were very desirous to limit the original jurisdiction of the Supreme Court as far as was at all consistent with what they deemed to be proper. This jurisdiction as to revenue cases, the committee will observe, is not exclusive. It is simply preserving the right in a certain class of cases which may arise. I do not know that they can arise; but they may, in which it would be very desirable that the court should exercise the jurisdiction, and it is carefully guarded, so that the question must arise only in cases where the Commonwealth is a party. Revenue cases might arise between individuals; I do not know precisely how, but they might occur. I think the limitation upon the original jurisdiction of the Supreme Court is very great already as the committee propose it, and that it would not be wise to further limit it. As we have reported it, I think it is a judicious limitation and one that will not do any harm.

Mr. J. N. PURVIANCE. I would re-

mark that cases of that kind involve fact as well as law, and would require the intervention of a jury. I cannot see the propriety of giving the Supreme Court original jurisdiction in cases in which a jury may be required to pass upon the facts. It strikes me that all the revenue cases would be better disposed of by coming before the Supreme Court for the mere correction of errors of law, leaving the facts and the law in the first place to the inferior court.

The CHAIRMAN. The question is on the amendment of the gentleman from Butler (Mr. J. N. Purviance.)

The amendment was not agreed to, there being, on a division, ayes forty-two, noes twenty-one.

Mr. ALRICKS. Mr. Chairman: May I ask the Clerk to read the section as it now stands?

The CHAIRMAN. The section will be read as amended.

The section as amended was read.

Mr. ARMSTRONG. The word "with" in the seventh line is a mis-print and should come out.

The CHAIRMAN. That correction will be made.

Mr. ARMSTRONG. I move to strike out the word "direct" in the eighth and ninth lines. The word is unnecessary there. It was introduced in contradistinction from the jurisdiction of the circuit court, and in revising the section the word escaped my attention.

The amendment was agreed to.

Mr. ALRICKS. I move to strike out, in the seventh line, the words "but shall not exercise any other original jurisdiction." The Supreme Court can, of course, have no jurisdiction except under this Constitution. These words are then of no force, and I can see no meaning in them.

Mr. ARMSTRONG. The purpose is to exclude the original jurisdiction and to prevent the Legislature from at any time restoring the *vis prius* court.

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin.

The amendment was rejected.

Mr. ARMSTRONG. After the word "and," in the fourth line, the word "of" should be inserted. It has been hastily printed, and is not accurate in that respect. It should read: "They shall have original jurisdiction in cases of *habeas corpus* and of *mandamus*," &c.

The amendment was agreed to.

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

Mr. BAKER. Let it be read.

The CLERK read as follows:

"JURISDICTION OF SUPREME COURT.

"SECTION 3. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties. They shall have original jurisdiction in cases of *habeas corpus*, and of *mandamus* to courts of inferior jurisdiction, and in cases of *quo warranto* as to all officers of the Commonwealth whose jurisdiction extends over the State; but shall not exercise any other original jurisdiction. They shall have appellate jurisdiction by appeal, *certiorari*, or writ of error, in all cases, as is now or may hereafter be provided by law."

The section as amended was agreed to.

The CHAIRMAN. The fourth section will be read.

The CLERK read as follows:

COURT OF COMMON PLEAS.

SECTION 4. 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.

Mr. PATTON. I move the following, as a new section, to be inserted after section three, and to be known as section four:

"In all civil cases where the amount in controversy does not exceed the sum of \$500 (except in those which involve constitutional questions, or where the Commonwealth is a party, or where a majority of the judges, herein referred to, shall certify that, in their opinion, from the importance of the principles involved in the case, it should be reviewed by the Supreme Court,) and also in all criminal cases in the courts of quarter sessions; instead of carrying the same before the Supreme Court, by writ of error or otherwise, the president judge of the court below, before whom the cause shall have been tried, shall be empowered to summon to his assistance, as often as three times in each year, the president judges of any two contiguous judicial districts,

which three judges shall constitute a court in banc, to be called the court of revision; and in all such cases as are herein enumerated, said court of revision shall have the same jurisdiction and powers as are now vested in the Supreme Court, and whose decisions shall be final and conclusive."

The CHAIRMAN. Does the delegate from Bradford propose to precede section four of the report of the Committee on the Judiciary with this section now offered?

Mr. PATTON. Yes, sir.

The CHAIRMAN. That can only be done now by unanimous consent. Is there any objection?

Mr. ARMSTRONG. I do not desire to raise any technical objection to the reception of the new section. I do not think it ought to be adopted.

The CHAIRMAN. There being unanimous consent given to the reception of the proposed substitute at this time, the Chair will withdraw the question on the fourth section to allow the new section, submitted by the delegate from Bradford, to be presented as an amendment. The question is on that amendment.

The amendment was rejected.

The CHAIRMAN. The question recurs upon the fourth section, which has been read.

Mr. MACCONNELL. I desire to ask the chairman of the Committee on the Judiciary the meaning of the words, "until otherwise directed by law." As it now stands, the section has three distinct provisions. The first is: "The commissions of the judges of the courts of common pleas shall continue as they are." Does the chairman of the Committee on the Judiciary intend that the sentence shall stop there, or does he desire it to go on, "until otherwise directed by law?" Or does he intend that the sentence begin at this point and read, "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." I would suggest that if this clause, which to me seems doubtful, is to be read in connection with the first provision, it be placed before it, and the section begin: "Until otherwise directed by law." If the clause is to be read in connection with the second provision, then these words should be placed after the words "common pleas," and the sentence should read: "The jurisdiction and powers of the courts of common pleas, until otherwise directed by law, shall continue

as at present established, except as herein changed."

Mr. BROOMALL. The words, "until otherwise directed by law," are unnecessary. Why not leave them out?

Mr. DARLINGTON. I do not know precisely what is intended to be understood by the expression, "the commissions of the judges of the courts of common pleas shall continue as they are." If the object is to say that those holding commissions at the time of the adoption of this Constitution shall continue to exercise the duties of their offices until the times for which they were elected shall expire, as I suppose to be the meaning of it—

Mr. ARMSTRONG. I do not see that there is any great value in the sentence.

Mr. DARLINGTON. It belongs rather to the schedule than anything else.

Mr. ARMSTRONG. I have no objection to striking it out.

Mr. DARLINGTON. I move to strike out those words.

The CHAIRMAN. The delegate from Chester moves to strike out in the first and second lines the words, "the commissions of the judges of the courts of common pleas shall continue as they are."

The motion to strike out was agreed to.

Mr. KAINE. I offer the following amendment to take the place of the section.

The CHAIRMAN. The amendment will be read.

Mr. ARMSTRONG. I will inquire whether the amendment is moved as a substitute.

The CHAIRMAN. It is. The delegate from Fayette moves to strike out the entire section and insert what will be read.

The CLERK read the matter proposed to be inserted, as follows:

"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 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.

Fifteenth. 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.

Eighteenth. 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. 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.

Mr. LILLY. I want to ask the gentleman from Fayette whether he has examined the districts very closely? I think not, or he would not have put the county in which I live in a district comprising so large a portion of the State. I hope he will remedy that in some way. Our district is now too large. We cannot get over it without great inconvenience.

Mr. TURRELL. I want to make a similar remark to that made by the gentleman from Carbon. His county is at one end of that district and mine at the other. I wish to say that there is no sort of reason in the world for that arrangement of the district, and if the gentleman from Fayette had consulted the delegates from there he would very easily have been satisfied that such was the fact. Why, sir, it leaves the large county of Luzerne almost entirely between the two extremes, so that the district is widely separated; there is no harmony of interests, no union in any way; difficult of access, and entirely inappropriate, and improper to be made.

Mr. KATNE. The gentleman who has just taken his seat complains of having one county at one end, and another at the other end. It is pretty hard to have two counties at the same end of a district, [laughter,] though it might be done, perhaps.

I desire to say to the committee that I prepared this section for the purpose of illustrating the principle and the manner in which it would work. I made the districts in this way, and I confess now very freely that I did not know very much about the country in which the gentlemen who have spoken on this subject reside.

Mr. BOYD. If the gentleman will allow me to ask him a question, I wish he would be kind enough to inform me by what authority or with whom he consulted in fixing Montgomery along with Chester and Delaware? [Laughter.]

Mr. DARLINGTON. I should like to ask that question also. [Laughter.]

Mr. KATNE. Just because of the difficulty suggested by the gentleman from Susquehanna, (Mr. Turrell,) that I might

have one county at one end, and one county at the other end of the district.

Mr. BOYD. Allow me to ask a further question.

Mr. KATNE. Not anything further, if you please.

The CHAIRMAN. The gentleman from Fayette declines to be interrupted further.

Mr. KATNE. In preparing this proposition I thought that gentlemen on the floor might make the districts to suit themselves. I meant it, as I stated, if the gentleman from Montgomery heard me, merely as an experiment, not with any view that this arrangement should be permanent, but for the purpose of carrying out the principle of electing three judges in a district, and having them hold court in the manner here indicated.

Now, Mr. Chairman, for the purpose of bringing this subject fairly before the committee, I will withdraw all that part of the amendment providing for dividing the State into districts, leaving that to be subsequently provided for; so that it will then read as follows:

"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. 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. 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."

That is the amendment as I now offer it. The arranging of the districts may be



left to the Legislature. The State may be divided into districts as may be provided by law, then limiting the number of counties to be placed in a district; but no more or less than three judges shall be elected in a district, except where a county is large enough to be entitled to more than one judge. For instance, the county of Lancaster, the county of Schuylkill, and other large counties in the State, would be entitled to elect two, three or four judges.

I think that an organization of the courts of common pleas in this way would, perhaps, be the best plan we could have for relieving the Supreme Court. I believe, if the judges of the courts of common pleas, three in a district, would meet together once each year, or oftener, as might be provided in the Constitution or by-laws, and then and there in banc hear all cases of importance—that is, all legal questions, motions for new trials, reserved questions of law, important questions of appeals, and everything of that kind; but very few cases, except those involving large amounts, or involving new or important principles of law, would ever be carried to the Supreme Court.

Mr. ARMSTRONG. Mr. Chairman: I shall detain the committee but a very few minutes on this amendment. It seems to me that it can scarcely commend itself to the approbation of the House. It is first to be observed that it proposes to legislate out of office every judge in the State. It destroys every district in the State; and we here, with an amount of knowledge confessedly very limited, undertake to district the State and destroy districts which have been judicial districts in this State from the beginning. It is so unwise, so unnecessary, that, after many vigorous attempts on the part of the committee, several schemes drawn out at length, one by the gentleman from Fayette, two by myself, and, I believe, some by the gentleman from Allegheny, the whole thing was abandoned from the fact that we could not find it practicable for this Convention to undertake to district the State. I need not call the attention of the committee to the fact that this is a mode of introducing at this place the new system of cumulative voting. That is also objectionable.

Mr. KAINE. I beg to remind the gentleman that neither of those provisions is in the amendment as offered by me.

Mr. ARMSTRONG. If they have been withdrawn, I stand corrected. What does

remain, however, is that the gentleman proposes an intermediate court. If it is to be a court with power to decide in the nature of an appeal it is a circuit or intermediate court, which this Convention has voted down, and it is such a court in a very objectionable form. The delay which will be incident to it is quite as great, and I think greater, than that which would be incident to the court which the Convention has already decided not to constitute. I will not detain the committee by any lengthened argument on the subject.

Mr. BUCKALEW. Mr. Chairman: I consider this the most important question that can arise on this article, to wit, the organization of the courts of common pleas. But it is very desirable that this question should come up unembarrassed by any collateral question, and this amendment as offered, unfortunately raised the question of forming districts. That has been withdrawn. It still, however, contains the feature that all the judges are to be elected in the new districts at the fall election of the present year. I should like the general question of the formation of common pleas districts to come up by itself without being embarrassed by any considerations of detail, any existing interests of any judges of the State in their commissions, or any disturbance immediately of the arrangements which now subsist, leaving the committee in the further progress of their action on this article to pass upon those questions as they will come up with reference to the city of Philadelphia, the county of Allegheny and the other counties of the Commonwealth.

The idea of forming common pleas districts with three judges each is one to which, ever since it was proposed, my mind has gradually more and more inclined. The first I saw of it was in the memorial from the bar of Northampton county, the plan being drawn, I believe, by Judge Maxwell of that bar, and concurred in by all his colleagues, and subsequently the gentlemen of that bar have sent us a second communication enforcing their former views. I observe also that the bar of Clearfield county have also approved this plan. The more I have reflected upon the subject, the more my mind has approved the plan. If it should be adopted, I believe it will work well, but of course I desire to see it brought into play in a manner that would be acceptable to all interests that now exist, to

disturb existing arrangements as little as possible, and thus secure it a fair trial.

As the question is upon us I will submit some of the considerations that have weighed upon my mind, prefacing them with the remark that I have been interfered with by no person on this subject. No judge, no lawyer, no citizen has talked to me about this in order to produce convictions in my mind. The views I have arrived at have been arrived at from my own reflections.

Now, sir, as we have determined that there shall not be an intermediate court between the common pleas and the Supreme court, composed of new judges, (thus introducing entirely a new feature into our judicial system,) the pressure of the argument that was made here on behalf of the Supreme Court remains; the evil if it be one, of an overcrowded court, or the impending evil in the future time of an overcrowded court, still demands our attention. Unquestionably the re-organization of the courts of common pleas in such manner that they shall be made more efficient, will meet the necessities of the Supreme Court at present and in the future; and the only question is whether this proposed organization of the courts of common pleas will be efficient to that end, and in other respects satisfactory to the profession and the people.

It will be of great advantage unquestionably, in many respects, if business which is now disposed of in the courts of common pleas by a single judge shall be heard by several judges, if the incompetency of an occasional judge shall be alleviated by calling to his aid the abilities and learning of two associates. We may expect that the people will not always be fortunate in selecting judges in single districts, that they will sometimes get men who are not competent; at other times they will get men whose impartiality may be open to question, men who may be swayed unconsciously, from their mental constitution, by party or other disturbing influences; and it will be a great guarantee and security for the administration of justice in our local courts if the unfitness of a single judge shall be alleviated or corrected by associating with him other judges learned in the law, to assist him in the discharge of his judicial duties. I think there will be a special advantage in this plan in equity practice which is now becoming extended in our State, and which will increase very greatly hereafter,

especially in connection with corporations, who, in various forms, will be called into our courts of justice by bills in equity for the purpose of establishing justice between them and citizens, or between corporators and the managers of those bodies. It will be a very convenient practice that bills in equity filed in the common pleas shall be certified to the court in banc, and be heard by three judges instead of being heard by one; and that can be conveniently done in the courts which are proposed to be established by this amendment.

Then, sir, reserved questions upon trials in court can be heard by this court in banc. Whenever in civil or criminal cases a question of difficulty, a grave question of law, shall be presented to the court, and there shall be difficulty in its determination either because it is new or because in the precise form it has not been previously determined by the highest court of the Commonwealth, it will be most convenient and useful that the question shall be reserved by the judge who tries the case, and that deliberate argument upon it shall be had before the full bench in banc, which can be convened at least twice a year in every county in the State.

Again, sir, in questions of new trial, which involve very often mixed considerations of law and fact, in questions affecting often the life of the citizen—I mean in cases of homicide and others of a grave character—it will be most convenient and most important that the judge trying the case shall have the opportunity of comparing views with two competent colleagues in the court sitting in banc.

And then, sir, there is another class of cases with which the profession is familiar. I mean cases stated where counsel agreeing upon the facts submit to the court the determination of the questions of law involved in the dispute between the parties. These cases are sometimes of the highest importance, involving large and important interests, and I venture to say that if you permit the members of the bar to argue questions of this kind before a local court in banc, and get the judgment of three judges upon them, they will rarely be carried to the Supreme Court; and thus the higher tribunal will be relieved of much business that now goes to it. That business will be satisfactorily transacted and determined in the local courts.

Now, sir, as our courts of common pleas are at present constituted it is not practicable, at least it is not reasonable, that you should prevent an appeal to the Supreme Court in any case. The people of the State will never be satisfied that a single judge shall pass finally upon questions of right and wrong as involved between parties litigant. Therefore, so long as we have our courts of common pleas organized as at present, with a single law judge—I do not mean in the cities, but in the interior—you must permit appeals to the Supreme Court in every possible case. If you do not allow that you will have gross injustice perpetrated very often, and you will produce dissatisfaction and complaint throughout the Commonwealth. Hence it is that now you are compelled to permit every suitor to take his case to the Supreme Court after it has been determined in the local court, and that will be the condition of things in the future unless you strengthen and broaden the organization of the courts of common pleas and qualify them for the final determination of a great part of the business that will come before them.

Now, mark an important consideration in this connection. This business which will be transacted in these courts sitting in banc will not, the most of it, be in the nature of an appeal from a single judge sitting at *nisi prius*. The court in banc will not be very much like a court of errors over-ruling the mistakes of an inferior jurisdiction, and that is one of the merits of this plan. The larger part of the business of the court sitting in banc will be in fact original; it will be business for the first time heard in that court, or at least first fully heard there. It will, therefore, possess to a great extent the advantages of a court of original jurisdiction.

There is another consideration that is very important; and it is this: That you can have business more promptly transacted in the ordinary court; you can have business transacted with much greater speed than you can have it now. At present a judge is obliged to try a cause with great deliberation, to try it slowly, to pause in the midst of a trial to examine books of law and determine questions of law, whereas if there was an opportunity to reserve questions of law, (as is done usually in the courts in cities where they transact business very rapidly,) and to have them heard by the court in banc, I venture to say that the ordinary business

in *nisi prius* trials would be much more rapidly transacted than at present.

Well, sir, there is another advantage in this plan; and that is, it is the most complete plan ever proposed in this State to prevent the accumulation of business in the county courts. If you have a county in which there is an accumulation of business, the judge of the district is compelled to over-exert himself in order to do it, or to call upon judges from other districts, as he can happen to get them, to come and try an occasional case, and the business is not worked off, and is not kept up to the necessities of the time. In a clumsy and irregular way the Legislature has attempted to apply relief to cases of this kind, by creating assistant law judges in various parts of the State, action on the part of the Legislature which I deprecate, which has not worked fairly and satisfactorily, and which cannot be relied upon for relief; but if you have your common pleas districts organized with three law judges, whenever there is a press of business in any one point of the district, there is plenty of local force to work it up. Additional labor can be turned into the county in which the business is backward, or has accumulated, and it can be worked up and kept level with other parts of the district over which the judges preside. They can arrange their business, they can exert their efforts, in such manner as to keep the whole business of their district up to the necessity of the times, and to the demands of the profession.

One other consideration—and I beg pardon for talking so long at this time—recommends this Easton plan, and that is one at which I have already hinted. It will enable the Legislature, whenever any necessity arises, to relieve the Supreme Court by stopping business in the common pleas courts in banc. I would be in favor of stopping all cases relating to the laying out of new townships, relating to election districts, relating to school districts, relating to disputes about the choice of municipal officers, and in relation to roads in a county. I would stop all such business in the court of common pleas sitting in banc, under such an amendment as this, and I venture to say that by a simple arrangement of this sort, you would relieve the Supreme Court of one-fourth of its business.

I confess I am not in favor of stopping business in the inferior courts upon a money scale, by saying that a party who has a suit that does not involve more than

three hundred or five hundred dollars shall not go to the Supreme Court. I think it is a bad means by which to distinguish between business which is suitable for a court of error and that which is not. I would arrange the business which I would stop in the courts of inferior jurisdiction according to its nature. That which relates simply to municipal business, the laying out of roads, and the construction of bridges, the arrangement of townships and election districts, and school districts, the little disputes about the election of municipal officers, and all business of that sort, I would stop in the court in banc. With three able, competent law judges at the doors of the people to act upon these matters promptly, I would stop them there, because it is unnecessary that they should go any further. I would not allow any of that sort of business to go to the Supreme Court and flood the docket of that court, unless, indeed, it be in those rare exceptional cases where the point is new and important, where it has not previously been settled and determined by the Supreme Court, or where it shall be shown that other courts of common pleas in other parts of the State have held or are likely to hold different opinions upon the same question. In such rare and exceptional cases, I can see that it would be convenient and proper for the opinion of the court below to be passed upon by the Supreme Court, so that the law can be settled; but with that exception I would stop off all this business in the lower courts; and in this manner I would relieve this Supreme Court.

Another advantage of this plan of which I have spoken, another great recommendation of it is, that it is flexible. Establish these courts of three judges sitting in banc, and leave with the Legislature large powers with reference to their jurisdiction and the transaction of business. I would allow the Legislature to define what cases should be heard in the court in banc, not only the business which shall be transferred from before a single judge to be heard by the three, but the manner in which the court shall sit in banc, and, if you please, the nature and character of the business which shall be finally heard and determined there. I would leave all this open to legislation, to the experience of the future. You have here a flexible system; not one rigid and unbending, that cannot be adapted to future times and the wants and interests of our people.

Provide here in this Constitution, this machinery, a court with three judges, who will act together, and who will act separately, and you will not only secure a prompt, speedy, cheap transaction of the business of the people, but by this means great relief will come to the Supreme Court, because a great mass of business that now goes up to that tribunal will be stopped in the court below, where the incompetency of one judge will be supplemented by the ability of two others; and where, by conference together by the three judges, you shall satisfy the bar and the people, whenever they have cases in these courts, that they will be fairly and thoroughly heard and determined.

I have said more than I proposed to on this subject, but I have spoken at this time because I was desirous that the attention of the committee of the whole, now that this amendment is up, should early in the debate be drawn to the particular points of advantage which the gentlemen of the bar of Northampton and Clearfield counties have supposed they see in this plan for the organization of the courts of common pleas.

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

Mr. BUCKALEW. Mr. Chairman: I move to amend the amendment by striking out in the first sentence of the section the words "1873," and inserting the words "1883."

I desire to say but a word of explanation. If the amendment to the amendment be adopted, it will permit the existing commissions to expire, and will provide a uniform rule hereafter for the constitution of these districts by the Legislature of the State every ten years; and in the schedule, I beg gentlemen to observe, whenever we reach it, the arrangement for the interval of time in which the commissions of judges now in commission shall run out can be arranged. If the amendment to the amendment be adopted, you can provide in the schedule, if you choose, for districting the State at the present time and to extend during the first ten years. You can provide in the schedule for the arrangement that will be necessary as to judges whose terms will expire in the interval.

Mr. STANTON. How will the amendment read as proposed to be amended?

The CHAIRMAN. The amendment as amended will be read for the information

of the committee of the whole. The amendment has been modified by striking out all the districts, and it is now a simple proposition.

The CLERK read as follows:

"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. At the general election in the year 1883, and every tenth year thereafter, the qualified voters of each district aforesaid shall elect three judges, citizens of this Commonwealth, qualified as aforesaid. 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."

The CHAIRMAN. The committee of the whole will observe that this is a substitute for section four of the report of the Committee on the Judiciary.

Mr. BUCKALEW. I withdraw my amendment for the present.

The CHAIRMAN. The question is on the amendment of the gentleman from Fayette.

Mr. DARLINGTON. Mr. Chairman: I ask for a division of the question, to end at the word "well."

The CHAIRMAN. The delegate from Chester asks for a division of the question, and the question is divisible. The first clause will be submitted to the committee.

Mr. ARMSTRONG. I call the attention of the committee to the fact that that is fully provided for in section fifteen of the report, to be found on the sixth page. I will read it to the Convention:

"All judges required to be learned in the law, except the judges of the Su-

preme 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 period of ten years if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature."

This section of the report, section fifteen, covers entirely the first paragraph of the gentleman's amendment and embraces other matter which it is very important should be a part of it.

The CHAIRMAN. The question is on the first division of the amendment.

The first division of the amendment was rejected.

The CHAIRMAN. The question recurs on the second division of the amendment. Does the committee desire it read for information?

[Several Delegates. "Let it be read."]

The CHAIRMAN. The second division will be read.

The CLERK read as follows:

"At the general election in the year 1873, and every tenth year thereafter, the qualified voters of each district aforesaid shall elect three judges, citizens of this Commonwealth, qualified as aforesaid. 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 judges 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."

Mr. COCHRAN. I move to amend by striking out the words "1873," and inserting "1874."

The CHAIRMAN. The question is on the amendment of the gentleman from York (Mr. Cochran) to the amendment.

Mr. COCHRAN. Mr. Chairman: It must be very evident that it would be imprac-

licable to hold an election in the present year, 1873, under the proposed amendments; and therefore simple convenience requires that the election should be postponed for at least one year under this section.

There is no doubt that this section proposes a very important change in the organization of our courts. It contemplates the constitution of districts, in each of which there shall be three law judges; and that those law judges shall hold the courts in those districts as well for the trial of cases as sitting in banc to determine reserved questions of law, motions for new trials, and matters of that kind, which are usually determined by the court of common pleas before they go up to the appellate court. I look upon this as a most valuable, most important and almost essential part of the reform which ought to be adopted by this Convention.

I have said, on a former occasion, that the trouble is that our courts, as now constituted, are not adequate to the transaction of the judicial business of the State; and it seems to me that if there is any one thing that is perfectly apparent it is that this Convention should adopt some measure by which the administration of justice in this Commonwealth shall be facilitated, and parties who appeal to the courts for relief shall not be impeded in the vindication of their rights.

There is one difficulty which we have to encounter right here on the threshold, and that difficulty is the commissions which now exist; and unless we can "screw our courage to the sticking point," and agree to treat those commissions as they have been treated on former occasions, and bring all things into subordination to the system which we deem to be necessary for the accommodation of the people of the State, then our work is in vain, and our labor is for naught.

When the Convention of 1837 and 1838 sat, they found judges upon the bench of the Commonwealth who had commissions which continued during good behavior; and that Convention, composed as it was of very conservative elements, did, notwithstanding, interfere with the existence of those commissions and legislated out of office the gentlemen who were on the bench at that time, according to the schedule which they affixed to their instrument; and so in 1851, when the plan was adopted of electing judges by the people, there were on the bench many gentlemen of high character and of great abil-

ity, and who had rendered good service, who, under the necessities of the occasion, were in like manner compelled to surrender their commissions, go down from the bench and submit the question of their election to a vote of the people.

If this Convention expects to adopt a measure of reform of this character, it must meet this very question face to face and determine whether or not it will say to the present judges in commission: "Gentlemen, in order to accommodate the people of this Commonwealth, and to make the judicial system adequate to the purposes for which it is established, it is necessary for you to yield up these commissions and go before the people again and submit your claims to them for re-election, if you desire it."

And, sir, there is no injustice in this proposition. No man ever took a commission as a judge in this State without the silent condition, well understood, that the people of the State, through the action of their representatives in Convention, had a right to vacate the commission and to place all of them on an equality before the people and require them to submit their rights to the question of a new election. It is absolutely impossible for us to institute a new system like this unless we follow precisely the same example which has been set to us by our predecessors. I have no doubt that in every district where a judge on the bench has acquitted himself to the satisfaction of the people of that district, he will be re-elected, for my observation has taught me that there is nothing which the people of this State are more indisposed to do than to change the judges who administer justice in their courts. The inclination is always in the other direction. I have no fear of any good judge who possesses the confidence of the community and who has exercised his functions with fidelity, ever being injured by the adoption of a measure of this kind. It is necessary for us, it seems to me, to adopt this amendment. The amendment to a certain extent is radical in its operations, and it cannot be useful.

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

Mr. COCHRAN. Yes, sir.

Mr. BARTHOLOMEW. What objection would there be to making these districts consist ten years hence of three judges, and providing that the commissions of judges to be elected in the mean while shall expire at that time; for instance, that the commission of a judge elected in

1877 should expire in 1883, and that the terms of the judges now in commission be extended to that period, leaving the judges in commission as they stand?

Mr. COCHRAN. I do not see how that would provide for the addition of these other two judges that we propose to elect. We propose to elect three law judges in every district. That is the proposition pending, and the proposition I am in favor of. Now, we propose not only to elect those judges, but I go one step further, and I believe that is the next step in this proceeding, to elect them on the cumulative or free vote plan, and I proclaim myself here an advocate of that principle. Looking at this matter of election, I think the only way to bring it down so as to apply the principle of the free vote to it, is to elect the three judges all at the same time, to put them on an equality as to term, and that their terms shall be contemporary in point of commencement.

Therefore, sir, I think we ought to meet this question fairly and squarely right here. For one, I am prepared to meet it, and to vote on it. By fixing the first election in the year 1874, as the amendment I have suggested proposes, you bring the whole thing down to a fair and square test in the Convention, and to a fair and square test in the year 1874 before the people. You re-organize your tribunals on the foundation which you deem to be the best, if you consider this amendment advisable, and you expedite the administration of justice throughout the several judicial districts of the Commonwealth.

The great trouble in all this matter is that the administration of justice in this State has become delayed by circumstances to which it is not necessary to refer; but the fact is so, and there is scarcely a district in the State in which the business is not greatly in arrear. In order to remedy that difficulty, it is necessary for us now to re-organize these courts on a new basis, and that basis, it seems to me, as I have intimated before, is indicated in the general principle of the amendment offered by the gentleman from Fayette. I am prepared to vote for that amendment, recognizing that principle, and to carry out all other necessary auxiliary provisions requisite to make it effective, and to bring it directly to bear upon the interests of the people.

Mr. M'MURRAY. I move, as an amendment to the pending amendment, to strike out all the words intervening between the

word "elected," in the ninth line, and the word "courts" in the fourteenth line.

The CHAIRMAN. The Clerk will read the words proposed to be stricken out.

The CLERK read as follows:

"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."

Mr. M'MURRAY. I simply wish to say a word in explanation of this amendment.

Mr. ARMSTRONG. I wish to inquire of the gentleman more particularly where the words are to be found that he proposes to strike out. In the amendment as printed, I do not find the word "courts" in the fourteenth line.

Mr. M'MURRAY. It is in the minority report submitted by the delegate from Fayette (Mr. Kaine.)

The CHAIRMAN. The Chair did not advert to the fact that the delegate from York (Mr. Cochran) had submitted an amendment to strike out "1873," and insert "1874." Therefore, the amendment proposed by the gentleman from Jefferson is not in order.

Mr. DARLINGTON. Mr. Chairman: We did not need the frank declaration of the gentleman from York (Mr. Cochran) to satisfy us that the purpose of this amendment is to introduce the minority or cumulative system of voting. No one can well shut his eyes to that fact. It is a part of the scheme which is intended, sooner or later, to be here introduced to persuade this Convention to adopt this revolutionary system in the organization of our government, and apply it not only to the election of judges, but of members of the Legislature, and wherever else it can possibly be applied. I was in hopes that all discussion on this question, as to the re-organization of the judiciary in a new manner, might have been reserved until we should reach the general question, at a later stage in our discussions. When this question arose, in the first instance, we were in committee of the whole upon the article of the Constitution relative to the Legislature, and it was then, to some extent, discussed, and passed off by re-committing that article to the committee who had had charge of it, to consider and report upon the various plans which were

submitted; but as it is introduced here, and is proclaimed, by the delegate from York, necessary to be met here, I suppose we may as well meet it now as at any other time.

The proposition of the gentleman from Columbia (Mr. Buckalew) presents two questions, or, rather, the proposition which he has discussed presents the one question, and the suggestion of the gentleman from York gives us to understand what we could very well understand without it, that it is but the entering wedge to the proposition of cumulative or minority voting, of both of which I shall speak in due time, and in order to introduce—

Mr. BUCKALEW. If the gentleman from Chester will allow me, the Easton plan, which is substantially this, and originated the amendment, no doubt, provided for the appointment of all the judges of the courts of common pleas by the Governor, and had nothing to do with their election.

Mr. DARLINGTON. Still, we understand perfectly well what the proposition is. If it is intended to appoint these judges, then the gentleman from York does not understand the proposition.

Mr. BUCKALEW. The gentleman was supposing that this idea of triple judges of common pleas districts originated in a design towards something else. I am simply correcting that impression.

Mr. COCHRAN. I wish to say a word by way of explanation, not by way of interruption at all.

Mr. DARLINGTON. Certainly.

Mr. COCHRAN. I had no conference with the gentleman from Columbia, or any other person, on this subject.

Mr. DARLINGTON. I did not say you had.

Mr. COCHRAN. My proposition is entirely independent, and no man is responsible for what I said except myself.

Mr. DARLINGTON. I do not propose that anybody shall be responsible, except for himself. That is not my point. I say it is part of the same scheme to introduce triple judges and cumulative or minority elections for them. Now, as to the first branch of it, I want to inquire—

Mr. J. N. PURVIANCE. Mr. Chairman—

The CHAIRMAN. Will the gentleman from Chester allow himself to be interrupted?

Mr. DARLINGTON. Oh, yes, I would like all the gentlemen to ask me a question.

Mr. J. N. PURVIANCE. I simply wish to inquire whether there is any other question before the committee at present except to strike out "1873" and insert "1874"?

The CHAIRMAN. No other question.

Mr. J. N. PURVIANCE. That being the only question, would not this debate more properly come when we have the proposition submitted? We have nothing before us now but the motion to strike out and insert—

Mr. CURTIN. I beg the pardon of the delegate from Butler; we have the delegate from Chester before us. [Laughter.]

Mr. DARLINGTON. Yes, sir, and we are apt to have. [Laughter.]

Mr. Chairman, if anything during our sessions has been emphatically decided upon, it is that we will have no intermediate court. If we did not understand the vote of sixty odd delegates to twenty odd the other day upon the question of the circuit court system to be an emphatic condemnation of any kind of intermediate court, then I confess I do not read the signs of the times aright. Now, what is this proposition but an attempt (I will not say insidious, for I do not mean to use harsh terms towards anybody, but if it were outside of this Hall and had been made by anybody else, I might be tempted to think that it was insidious,) to get before us what we have already condemned and ask our adoption of it, in another form, under the pretence of relieving the Supreme Court from the burden which now rests upon it.

What else is it? It is the assertion of the gentleman from Columbia that the Supreme Court have too much to do. This Convention, however, has said that they have not too much to do; that they are able to do it all with proper vigorous health on the part of the judges and proper application on their part; that we do not need any intermediate court. If we do need an intermediate court to relieve the Supreme Court, let us go back and adopt the circuit court system recommended by the committee. Do not let us by a side-blow introduce an inferior set of judges to those whom we contemplated, to spread over the land.

But that is not the idea which the committee will attach to this project. This intermediate court is proposed because it is supposed that it may be chosen by the system of minority representation or cumulative voting; I care not which.



Why is it proposed that we shall elect these judges in districts composed of three judges, but for the purpose of introducing that minority representation system? It does not necessarily belong to the first part of the proposition, even if we were prepared to adopt it. Suppose, for instance, this Convention were prepared to say that an intermediate court is necessary, and that it should be composed of three judges of the common pleas, conveniently located for the purpose of meeting together and hearing important arguments, and then satisfying the community. Suppose we were to adopt that; does it follow that they cannot be elected one by one in the districts in which they now are elected and preside? Why is it necessary to add together three different judge's districts and have the people of those districts voting for the whole three at a time, except for the purpose of getting in a minority man and thus carrying out party views? It is the introduction of this minority system into the choice of the judiciary, which is even worse in its character and worse in its effects than the introduction of it into the choice of your legislators. What would be the effect, I appeal to gentlemen here, of men so chosen going upon the same bench? Each one would go there with his party feelings, two of one side, one of the other; and in all cases you would have a court of three, one a Republican, two Democrats, or the reverse.

Is that the way to let each gentleman elevated to the bench understand that he is to hold himself above party; that although elected by party, yet when elected he should hold himself above all party? In looking at the history of this country and of the eminent men who have presided on the bench of the Supreme Court of the United States, as well as the Supreme Court of this State, who does not know that there are shining examples of men who have been appointed or elected assitric party men, and yet who, when they got upon the bench, ignored all party affiliations and behaved as they should behave. There are good men in this community, there are men fit to be elevated to the bench in this community of all parties; and when such a man is selected and placed in a judicial station, if he has any self-respect, any proper appreciation of the duty which is devolved upon him and of the dignity of his office, he will know no party; he, though elected by a party, will be the judge of all parties

within that district, and he would be ashamed of himself to the last day of his life if he allowed himself to be influenced in the slightest degree by any consideration of that kind in deciding between man and man.

What then is the effect of permitting a man to be elected by his party and not by the whole people? Why, it is to make him a more distinct and emphatic party man than he was before; it is to make one man a party Republican and another man a party Democrat, and thus they go upon the bench antagonistic, each one with his own views, neither called upon in his own judgment to yield his party feelings or to elevate himself above the head of everybody who talks politics. Are you more likely to have eminent and pure men when you make them the choice of their own party, and refuse to allow the others not to vote on the question, than you would if everybody was allowed to vote? If it should so chance that any gentleman on the floor of this Convention should be selected for that high honor, I care not what his party may be nor what his party affiliations may have been heretofore, when elected, would he consider himself the representative of the majority, or would he consider himself the representative of the majesty of the law? Would he not consider that this was only a mode of appointing him, and that when elected he must, like Chief Justice Taney and other eminent men, ignore all party, so that no man thereafter should be able to discover which party elected him. Each member of the community has a right to be consulted in the choice of who shall fill such an office. How is he to choose? Is he at liberty to vote for A or for B for the same office on different sides? No, it is not expected that he will. He is to vote for the man of his own party, and he will be elected, and the other is to be voted for by the men of his party and he will be elected; and thus your judges of the courts, whether Supreme or inferior, will be nominated and elected by their party, and it will not be in the power of the best men in the land to prevent a party man going upon the bench if you apply to him the system of cumulative voting, of which so much has been said out of doors. Let a bad man be nominated by bad men in the country, or in the city, and he is one of three, if you please, in the district, and let the bad men cumulate their votes upon him, and the men who

nominated him would be sure to elect him, and it would not be in the power of the virtuous to prevent it. Thus you would most effectually carry to the bench, if on the one hand the best elements, on the other the worst elements of society.

Now, I confess I want to see men placed in juxtaposition with each other. I want to see a Democratic nomination, and I want to see a Republican nomination, for all the high offices in the gift of the people, and I want the privilege of choosing between those two with some consciousness that my vote will have effect along with others. But your system of minority representation stops all that. It is the party who nominate that elect, and it is not the whole people; and the effect necessarily is, when a man gets into office under such circumstances, that he considers himself what he ought never to consider himself, the representative of his party, and not of the whole people. It is so when you apply it to a legislative body. When men are elected to the Legislature under such a principle, one out of three is elected by one party, and two out of three by another; and when they go there, what is it but saying to one, "you represent the party that elected you;" and to the other, "you represent the party that elected you on the other side, and neither of you need aspire to elevate your minds above this low grovelling position." There you are, party men on both sides; neither at liberty to throw off this shackle and say, "although elected by a majority of the people, I am here the representative of all."

This whole system, this whole principle of minority representation is based upon the false idea that a man when elected is not the representative of the whole, and is not at liberty to ignore the rights and privileges of one any more than another, but bound to look to the interests of all, regardless of whether they voted for him or against him.

Now, you seek to inject this principle into your Constitution, and apply it to the election of judges; have you any warrant in all past history for it? No. No government in the world, no government of any State has ever applied it save in the single instance of New York, and that only in the first election of their judges of the court of appeals, and never to be applied afterward.

Mr. WALKER. That was not the cumulative vote.

Mr. DARLINGTON. That is the minority representation—that part of it. But in

no other State has it ever been applied to the election of judges. It is not so in Illinois. They do not elect them in that way there. They elect their Legislature in that way, but not their judges. In New York alone it has been applied to the election of judges of the court of appeals, composed of seven; but when they go out of office, one by one, it is no longer applicable. After the first election there is an end of it there.

The commission that so lately sat in the State of New York to revise the Constitution of that Commonwealth, have just completed their report to the Legislature of New York, and I have been favored with a copy which I have carefully read. That commission recommend no change in the organization and election of their judiciary. They recommend no change in the organization and election of their Legislature, save that instead of the Senate consisting of thirty-two members elected in single districts, they require them to be elected in eight districts, four Senators in each district, each Senator to serve four years, thus making one go out every year. As far as the House of Representatives is concerned, they follow the Constitution which was adopted in 1846, and which has been in force ever since, to wit: The election of Representatives in single districts.

In no place, therefore, has there been adopted any such principle as is sought to be here incorporated into our organic law. Not even in the State of Illinois was the principle as there adopted made applicable to the election of judges; it is restricted to the Legislature, and under it but one election has been held, so that even in its partial extent it has not received the vindication of an experience sufficiently long to be valuable. Are we prepared to introduce with reference to our judges a scheme so revolutionary as this? Are we prepared to introduce politics in its worst form into the Constitution of this State?

Mr. HAZZARD. Mr. Chairman: I regret very much that I am compelled —

The CHAIRMAN. Does the gentleman from Chester yield to the gentleman from Washington?

Mr. HAZZARD. I am addressing the Chair, and not the gentleman from Chester. I rise to a point of order.

The CHAIRMAN. The gentleman from Washington will excuse the Chair. The point of order will be stated.

Mr. HAZZARD. My point of order is this: I do not think the remarks of the

gentleman from Chester are germane to the question pending. The question before the House is simply a matter of date raised upon a motion of amendment to strike out one date and insert another. No system of election is at present before the committee of the whole.

The CHAIRMAN. The Chair is of opinion that the point of order is not well taken. The question of the date in this instance necessarily involves the question of the election of a number, and that brings up the whole matter of elections.

Mr. DARLINGTON. Mr. Chairman: I have little more to add upon this point

The CHAIRMAN. The Chair is compelled to remind the gentleman from Chester that his time has expired.

Mr. BIDDLE. I move that the time of the gentleman from Chester be extended. The motion was agreed to.

The CHAIRMAN. The gentleman from Chester will proceed.

Mr. DARLINGTON. I had no desire at all to be precipitated into this discussion this evening, and should not have thought of it had not this question been presented in its present shape, when several gentlemen stated that we might as well meet this issue here and now, and therefore we are compelled to consider it in all its bearings. I do not precisely remember, for I have not the pleasure of having before me the printed amendment of the gentleman from Fayette, (Mr. Kaine,) whether it contemplates minority representation or cumulative voting.

Mr. KAINE. Neither.

Mr. DARLINGTON. If it contemplates neither of these two principles, then I am at a loss to understand why the gentleman from York (Mr. Cochran) means minority representation or cumulative voting in his proposition.

Mr. KAINE. You seem to have smelt it out. [Laughter.]

Mr. DARLINGTON. There are here two principles, each distinct, and I do not know whether they are thoroughly understood by everybody in this Convention. One is called by my friend from Columbia the limited vote, and the other is called the free vote. The limited vote is what is generally known as minority representation. The other is cumulative voting. They are different in their character and different in their effects. As to minority representation, I have said that it can only be applied to a triangular contest or, at best, to an election where there

are two candidates running. It requires more than one candidate to be in the field for the same office before the principle of minority representation can be applied to an election. And the same is true of cumulative voting; you cannot cumulate where you have but one candidate. In the election of a Governor we cannot apply either the one or the other system, nor can we do so in the election of a Lieutenant Governor, or in the election of the judges of our courts, if we continue to elect them singly as we do now, allowing them to go out, one after the other, as they have become Chief Justices, and served their time. In neither of these cases can we apply either the cumulative or the free vote system.

Mr. BIDDLE. Will the gentleman from Chester permit me to interrupt him?

Mr. DARLINGTON. Certainly.

Mr. BIDDLE. Is it not possible to have an election for two supreme judges at the same time, as was the case when Chief Justice Thompson and Judge Strong were elected?

Mr. DARLINGTON. Such a case, I know, did occur, but it could necessarily happen but seldom. In that case, if you restrict the vote so that no man can vote for more than one candidate, I admit that you will carry both in, and thus accomplish the introduction of party in the bench of that high tribunal. The same result, as far as the political question is concerned, might be effected by the cumulative principle if each were to have two votes with a privilege of voting one vote each for two candidates, or of giving both votes to one candidate. It might still have the same effect.

Mr. C. A. BLACK. It would have that effect.

Mr. DARLINGTON. It would have that effect if there were but two candidates. It would not have it to so great an extent if there were three candidates instead of two.

But where is the necessity in the choice of two judges of the Supreme Court at the same time, of applying either one system or the other? Where is the necessity of restricting a voter to a choice of one candidate and allowing another voter to cumulate his votes on another candidate? It seems to me that this is a blow at that provision of the Bill of Rights, which declares that "all elections shall be free and equal." Elections cannot be equal, and cannot be free, if I am not to be permitted to vote for both candidates when two of

fices are to be filled. If you say to me "you shall vote but for one of these men," is that a free election, if you at the same time say that another man may vote two votes on another candidate? It does seem to me that that can hardly be called a free election.

But I do not propose to enter into that argument now. It is susceptible of enlargement; but at present I do not propose to give it further consideration. Independently of that, what I mean is this: That in electing two judges—and to take the simplest case possible I will say two judges of the Supreme Court at the same time—what is best for the community to do, what is the best plan to pursue? To let Mr. Biddle and his friends put up for nomination the two best men they can select and to let me and my friends nominate the two best men in our party; and then there will be a choice. If then a party makes a mistake in putting a man in nomination, there is a chance to correct it. Again and again we have corrected such mistakes. It has not been my fortune, all my life, to vote altogether for the ticket of my own party. I have at times felt it to be my duty to vote for one or more upon the opposite side. I never was so hide-bound but that I could not cross the line of political demarcation, and I never wish to be so tied down by party considerations that I cannot cross it. If my friend Mr. Biddle becomes a candidate for a seat upon the supreme bench, I hope to vote for him, and if I had ten votes I would gladly give him them all, but I could not in justice to those who wish to vote for other candidates favor any system which would allow me to cumulate more than one vote upon any one candidate.

It is best for you Mr. Chairman, it is best for the community, that the systems of elections should remain as at present, because when each party presents its candidates and but one set of candidates can be selected there is then a choice. What good is to be obtained by such a change of our elections? Suppose two men are to be elected to the supreme bench at the same time, what follows? There is scarcely a member of the Pennsylvania bar who if he were placed in such a position would not be lifted up above any party considerations and ashamed to be governed by party in anything that he would do upon the bench, I do not care what his proclivities were before his election to that office. Let me refer again to Chief Justice Taney. Who

ever supposed that he could permit anything dishonorable or dishonest to occur in his court, and yet he was not of my party. The same thing might be said of Chief Justice Tilghman, of Chief Justice Woodward and Chief Justice Black and of all our judges. Nobody has ever said that they were ever governed by party although they were elected upon party tickets. We all know that there were various political questions which came before them for decision, when it was natural that the court should divide and take different views of the law. Yet there was nothing wrong in this. We all know that upon questions between man and man judges have taken different views of the law again and again; but they were honorable and upright men whose official purity no one questions. But as under this cumulative system the candidate nominated by each party must be elected, will your judiciary retain this high character? Suppose you go into the lower part of this city, and applying the cumulative vote require that the candidates who receive political nominations for judge shall be elected, who would be the candidates in such a case either of the Democratic party or my own? Just such men as neither my friend Mr. Biddle nor myself would ever be willing to have preside over a court in which we had any interest. Under our present system of voting a bad nomination could be defeated by the people, but under the cumulative system the candidates of each party would necessarily be elected, no matter how objectionable they may be.

That is the result of cumulative voting. Minority representation is no better, for if a political party nominates a bad man, none of us would have the power to secure his defeat. I want to see this government, which was founded on republican principles, maintain those principles for ever and ever, and it cannot be the government of the people in any other way than by being the government of the majority of the people. No government should ever be the government of a minority. No man ever put that doctrine more forcibly than did Governor Hoffman, of New York, in his veto message in regard to the New York city charter. "The business of a minority," said he "is to watch and argue and do all that they can to prevent mischief being done by the majority." But the responsibility is at last upon the majority, and upon them must rest the honor of a successful government, or the

discredit of a bad one. A minority is not responsible for the actions of the majority, and therefore it is unwise to allow a minority to elect their officers under this new plan of voting, or to have anything to do with the formation or carrying on of a government.

I know the argument that is presented upon the other side in answer to this, and it is very beautiful in theory. It is urged that in a district where three candidates are to be elected, two should be elected on one side and one on the other. Why should not all three be Democrats, or all three Republicans? Why should we not nominate the three best men in our party, and say to our Democratic friends, "these are the best men we can place in nomination and you have not their equals in your ranks?" That is what they would say to us under the same circumstances, and it should never be alleged that any man ought to be elected to any political office because he belongs to the minority.

Are we in any danger that minorities will not be represented? Minorities are represented everywhere. They are represented in the public press, upon the stump, at the hustings, in the halls of legislation, in the court and everywhere, and all the arguments that can be suggested by ingenious and intelligent men are there presented to operate upon the majority. But if all of these should fail to convince the majority, of course the responsibility must be upon them. Is there any danger that in the Legislature, by way of illustration, there may be any difficulty about a minority being represented? Who ever saw the time, no matter what political party was in the ascendancy, when there was not a minority strong and powerful, that would make itself heard, and present all the arguments necessary to be presented in support of their principles?

To be sure, there are districts sending members to the Legislature who are all on one side; but in a neighboring district (as I had occasion to cite by way of illustration in speaking once before) near by or in another part of the State, who have an opposite majority, send men who represent the views of that minority. Never was a legislative body brought together since the history of this government began, in which there were not two parties or more, majority and minority. What is the business of the minority? To convince the majority of their wrong, to make the majority their own by bringing

every member of the majority to them, if they are right in principle, by argument, by persuasion, by reason; and that is to be effected by minority representatives from whatever portion of the State they may come. There is no fear, therefore, gentlemen, but what the minority will always be represented, no fear but that they will always present all the argument that can be presented in the legislative halls.

In the courts we have no occasion for minorities or majorities. I trust we shall elevate ourselves, and elevate the judicial office to the position that it must be, above party; that it cannot be otherwise than above party. I would not have a judge forget his youth, forget his proclivities, forget his opinions; that is not to be expected; but he should ignore them in all questions between man and man.

Do you suppose that by electing judges of one party and another, and placing them on the bench, they will forget, in political questions, all their previously conceived notions? No; they will still have their party views, and each one, on political questions, will present it to his fellows in the best means he can, and endeavor to convince them; but at last, if they fail to convince them, the majority must decide, as in all cases of government. It is inapplicable, you will observe, except where there are two or more to be elected. You cannot apply it to your Governor, to your Lieutenant Governor, or to a great many other officers. Why should you seek to apply it, in a case like this, to the judges? Is not this the very last place where you ought to elect a man as a mere party man, where a nomination may be equivalent to an election? I take it that that is the last place in which that should be done.

Now, Mr. Chairman, I do not desire to detain the committee longer. I know there are other gentlemen better qualified than I am to speak to this question, and I cheerfully yield.

Mr. FULTON. Mr. Chairman: I desire to say but a very few words upon the section now before the committee, and I do that because it occurs to me this is one of the most important questions that has come before this Convention.

I regret very much indeed, Mr. Chairman, that the last gentleman who addressed the committee, in view of the great importance of this section, did not make his very forcible and convincing argument on some other section that

might have come up at some future time, inasmuch as he insisted and persisted in making an argument not upon the question before the committee; but as his argument was made, the next best thing that I can do as a friend of this section is to ask the gentlemen of the committee to bear in mind that that forcible argument was not made upon this section. And gentlemen, I appeal to you now, when you come to vote upon this section, that you do not apply that argument which does not apply to it, in your votes.

The question before the committee was very fully argued by the gentleman from Columbia, (Mr. Buckalew,) and a number of forcible reasons given why this section should be adopted by the committee, and as no attempt has yet been made to answer any of the arguments, I will only make a very few remarks.

It is admitted by every gentleman in this Convention that something has been demanded for the relief of the judiciary of the Commonwealth. Now, if we have made up our minds that we are going to do something for the re-organization of our judiciary, what is that to be, or why should we drag any outside question here entirely disconnected with this, when we are considering this important subject? I believe that it is pretty well conceded that the associate judges on our common pleas benches will be abolished by this Convention.

Now, I want to call the attention of gentlemen of the committee to the fact that this is a very important and radical change. It is one that I am not certain will meet with the favor of the people of this Commonwealth unless we give them something to take the place of those associate judges. How are we to do this? We are told now daily that if the associate judges were abolished you would leave it entirely in the hands of one man. Where is the remedy? In the very section now before the Convention, if we organize the courts of the Commonwealth in districts of three judges learned in the law who are to preside over our courts in every question of importance, does not that replace, yea, more than replace, our associate judge system?

Another thing that is expected of this Convention is to bring speedy justice to the people, and that at the smallest possible cost. It is insisted, if we are to organize any kind of districts, why not go back and take the circuit court that was rejected by this Convention. Here is an answer

to that question: If we organize these courts, three counties in a district, or a district sufficiently large for three judges, every man's case may be adjudicated and tried, probably to the satisfaction of a large majority of them, right in his own county, right at home, at the very smallest cost, without carrying him away into some neighboring county or city, there to have his case tried.

There are a number of other things that might be said in favor of this system, but I will not detain the committee, as it is late; but I do hope that the committee will think seriously of this matter of the organization of our judiciary, as it is one of importance. To meet the expectations of the people (because the people are expecting relief in this matter from this Convention) we must do something, and I think that the present section now before the committee, with perhaps a few modifications, is as near what the wants of the people demand as anything we can get.

Mr. STANTON. 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-five, noes thirty-six.

Mr. KAINE. Mr. Chairman: I consider this amendment of very considerable importance, and I desire to have it as it stands before the committee, treated fairly. I do not desire it to be affected by the speech that has been made by the gentleman from Chester (Mr. Darlington) upon the subject of free or cumulative voting. When he commenced his remarks, he eschewed any idea, as I understood him, of speaking upon the question of the manner of electing the judges, but distinctly stated that when that question came before the Convention, it would hear from him.

Mr. DARLINGTON. Will the gentleman allow me to explain?

Mr. KAINE. Yes, sir.

Mr. DARLINGTON. I endeavored to say distinctly that the subject had been precipitated upon the Convention, against my motion, and I had hoped it would be put off to a later day.

Mr. KAINE. The gentleman said that also, I remember very well; but he further said the other, in a previous part of his remarks: That when the question came up, the Convention or the committee would hear from him. I thought that remark upon his part, was entirely unnecessary, because the Convention very well

knows that when any question of any importance at all comes up, it hears from the gentleman from Chester. But on this occasion I do not want the committee to be impressed with the remarks that have fallen from that gentleman, upon a subject that is not at all before the committee.

The question before the committee is upon the change of date; whether they will change it from 1873 to 1874. I am not at all particular about whether the election shall take place in 1873, or 1874, or 1875. That is a matter that can be easily arranged hereafter, if the Convention should determine upon this manner of selecting the judges, and the manner of their holding courts here proposed.

The objection is made that an election held in 1874, or sooner, or a year or two after, probably would turn the judges now in commission out of office. I beg the members of this committee to remember that by the amendment to the Constitution in 1850 every judge, supreme as well as common pleas, of the State was turned out of office, and a schedule for that purpose was placed in the article itself. Would it be any harder to turn the judges out of office now than it was then? By the amendment to the Constitution of 1837-38 a limited time was allowed to judges who had been in office so long. Those who had been in for a longer period were turned out at once. But in 1850, when the manner of selecting judges was changed from appointment to selection, it went into operation at once, and immediately upon the adoption of the amendment to the Constitution and the election of judges thereunder, all the commissions of the old judges expired. That may be done so now, or it may be done otherwise; it is very easily provided for in the schedule.

The only thing I contend for here now is the plan provided by this amendment for the selection and organization of the courts of common pleas. I want three judges, and I want them to be elected in districts. Those districts may be established by the Legislature. I want three judges learned in the law. I want the State divided into districts by the Legislature, if this Convention sees proper. They may be elected in any manner that may suit this Convention or the Legislature. The proposition, as it now stands before the Convention, does not involve the question of free or cumulative voting at all. A district can elect three judges as well as one, and they may be all

Democrats or all Republicans, just the districts may be, or they may be just as the people choose to select. If, however, the Convention should hereafter determine upon adopting a different system of electing the judges of the Supreme Court and of the court of common pleas, as has already been indicated in regard to the Supreme Court by the gentleman who offered an amendment once or twice on that subject, very well.

The gentleman from Chester says that such a system of voting as that has never been heard of in any State in this Union, except in the State of New York. Why, sir, he has been living under a system of that kind and has been exercising it for the last thirty years. For the last thirty years the gentleman from Chester has been voting for one inspector of election, while his neighbor of opposite politics has been voting for another.

MR. DARLINGTON. Allow me to explain. I did not say any such thing. I only said that as to judges it had not been applied.

MR. KANE. I should like to know of the gentleman from Chester what difference it makes in principle whether you elect judges of the court of common pleas or any other officers under that system, or whether you elect inspectors of election. He said it had never been applied to the judiciary. There again the gentleman from Chester is mistaken, because for the last three or four years one branch of the judiciary at least has been selected upon that system; I refer to jury commissioners. I presume the gentleman has that system in Chester county, as I believe it is a general law. No fault has been found with that. No fault has been found with the election of inspectors of elections since the act of 1839 under the Constitution. So much for that.

Under this system for the constitution of the courts of common pleas, there would be three judges in a district, one judge holding a court during one session in one county; at the next session in the same county the court being held by another judge, and so on alternating all around the district, and at times to be fixed by law, either once, twice or three times a year, those judges would meet in each county as a court in banc, and then hear the important questions that might be brought before them; as I stated before, questions arising upon motions for new trials, in which all the important legal questions in a case could be re-argued and

adjudicated, and if they had been decided rightly in the first instance by the judge who held the court, the verdict would stand; otherwise, it would be set aside and a new trial awarded.

Mr. EWING. Allow me to ask the gentleman, wherein does that system differ from the New York system, which it has been stated over and over again has caused such great delays in the decision of causes?

Mr. KATNE. I do not think there is any similarity to the New York system at all. Which court of New York does the gentleman refer to?

Mr. EWING. To all their courts. I understand it to be precisely the system of their Superior Court, the court of common pleas, and what they call their Supreme Court.

Mr. KATNE. It has no similarity to either of them, not one particle. The gentleman has not looked at the provision in regard to the constitution of the courts of the State of New York, or he has not looked at the proposition now under consideration before the committee.

This plan would have the advantage of having three judges in place of one. It would have the advantage also, if it should happen that one of the judges should be in bad health, feeble, not able to attend his courts, the others could hold the court in his place. Now, the gentleman from Allegheny wants to know the difference between this system and that of the State of New York. I answer that there is no similarity between them at all; but I want to know of the gentleman from Allegheny whether the same principle does not prevail in the district court of Allegheny county; whether the two judges there, and in the court of common pleas also, where they have three judges, do not meet, perhaps, once a week, or once a month at least, and hold courts in banc for the decision of just such questions as I have named. Will the gentleman answer?

The CHAIRMAN. The gentleman from Allegheny (Mr. Ewing) is interrogated.

Mr. KATNE. The gentleman from Allegheny does not answer, because he knows it is exactly so. He knows that that is precisely the case there, and I know they are very much wedded to that system there. They do not desire it to be changed at all. All they want there, is more judges; they want more legal force. They have, in a population of one hundred and eighty thousand or two hundred thou-

sand, about five judges now, and they want one or two more, while in an adjoining district to Allegheny, where they have a population of one hundred and fifty thousand, they have but one solitary judge; and in that district I believe our worthy chairman resides. Now, sir, if this system is good for the county of Allegheny and the city of Philadelphia, for it prevails in this city just in the same way, if it is advantageous in the cities, why not let us have it in the country districts as well as here? Gentlemen say that anything that will relieve the people is desired, and I am satisfied this will do it better than anything that has yet been presented to the consideration of this Convention.

The gentleman from Chester also said that this was nothing more than the plan of the circuit court, which had been voted down. It has no similarity to the circuit court at all. The gentleman certainly had not read it, or he would not have made a statement of that kind.

Mr. DARLINGTON. I rise to explain. What I said was that the intermediate court was voted down, and this was but an intermediate court.

Mr. KATNE. The gentleman said it was just like the circuit court that had been voted down. I say it has no similarity to the circuit court at all, nor is it an intermediate court, as he chooses to call it. It is a kind of a district court. It bears no resemblance to the circuit court, because that was a separate and distinct court with appellate jurisdiction. This has none. There is no increase in the number of judges. The same judges of the court of common pleas hold this court in banc; and, as I have said, if this system of holding courts in banc which prevails in districts where they have two or more judges in those district courts and courts of common pleas, answers well there, I am satisfied it will answer as well here.

The details of the system can be very easily provided if the Convention should be satisfied with the principle. The section would require an amendment, if adopted in this way, that the districts should be provided by the Legislature and limiting the number of counties at least that should be contained in a district. Some other amendments would be required, because, as I stated to the committee when I first spoke of the amendment, I had arranged it in a different way from that in which it is now presented here; but the principle is the same. It is



the three judges in a district, holding courts alternately, and holding courts and sessions in banc. Those are the distinctive features contained in the proposition and which I desire to engraft in the Constitution.

When the question of the manner of selecting these judges arises, then, like the gentleman from Chester, I may have something to say upon the subject. Whether they shall be elected by the people at large, in the district, or whether they shall be elected upon any other system of voting, will be a matter for this Convention to determine; but it can make no difference upon the question, it can make no difference upon the principle, it can make no difference upon the utility and advantage of the court, so that we have the three judges, so that they alternate in holding the courts, so that the three judges meet together and hold courts in banc for the decision of such questions as may be provided for their decision, either by law or by a general rule.

Mr. M'MURRAY. 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-one; less than a majority of a quorum.

The CHAIRMAN. The question is on the amendment of the gentleman from York, (Mr. Cochran,) to the amendment of the gentleman from Fayette (Mr. Kaine.)

Mr. ARMSTRONG. I desire, before the vote is taken, to say a very few words on this question. As the proposition now stands, the first division of it having been voted down, it raises two distinct questions. The first is embraced in the following words: "At the general election in the year 1873"—now proposed to be amended to 1874—"and every tenth year thereafter, the qualified electors of each district shall elect three judges."

It is impossible, in the nature of things, to carry that out. Three judges may be elected at the first election, because then it is an open question; but who is to insure the lives of the judges until the next election? And yet the language is imperative, and provides that three judges shall be elected every ten years. Now, if at any time before the ten years expire, any one of the judges dies, his place must either be left vacant or a successor must be either appointed or elected. When there is a single vacancy to be filled, no cumulative system of voting can be ap-

plied, as there is but one person to be elected. When there is only a single vacancy the whole system becomes impossible of application. No mode is provided here for the filling of such vacancies.

Mr. Kaine. I desire to suggest to the gentleman from Lycoming that the question of electing these judges is not now before the committee.

Mr. ARMSTRONG. I am not unmindful of that; and yet the gentleman, and others who have discussed the question, have introduced it as a necessary part of the scheme which is to be forced into the mind and presence of the Convention, step by step. It is a part of his original proposition, and it is left out only for expediency, in order that the Convention may be committed to a part of the measure, which renders the subsequent adoption of the rest of it a necessity. I do not propose to be thus misled. I mean to understand and discuss the question as it is in fact, and not to be diverted from its essential character by a merely parliamentary device. The vote will be on the first division of the question; but that is no reason why we should shut our eyes to the ultimate purpose of the proposed amendment. One of the urgent reasons pressed earnestly upon the attention of the Convention, is the necessity of allowing three judges, of the same or of adjoining districts to consult, and the districts are ostensibly to be composed of three judges each, for this purpose. If this is the only purpose, then it is wholly unnecessary. We need no amendment to the Constitution to do that. It may be done by the Legislature at any time; for it is very easy for the Legislature to provide by law, if it be so desirable, that in three adjoining districts the judges shall meet for purposes of consultation, or for any other jurisdiction which may be conferred by law.

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

Mr. ARMSTRONG. Certainly.

Mr. Kaine. Will the gentleman tell me what necessity there is for putting into the Constitution a provision that the Supreme Court shall consist of seven judges? Has not the Legislature now a right to make it seven or nine?

Mr. ARMSTRONG. They have undoubtedly such right; but it was expedient because it is proper and usual to define in the Constitution the organization of the court of last resort, and if this were

equally proper and reasonable I would not object to it. The gentleman from Columbia, (Mr. Buckalew,) however, has on frequent occasion suggested, and frequently with great force, that that which the Legislature may appropriately do ought not to go in the Constitution unless there be good reasons for it. Now, I fail to perceive any sufficient reason for the proposed change. It seems far more probable that it is an effort to get the Convention committed to the system of cumulative voting, for there is no necessity whatever for a constitutional provision to require that certain judges within a given district may or shall consult. It is within the appropriate province of the law and should be left there. Mere advisory consultation they may have now; and if it wants to be more definitely defined by law, it can be done; but the idea seems apparent to force the Convention into adopting a system of triplicate districts and triplicate judges in such districts and then urge the propriety of their election by the cumulative vote. Let that question come up when it ought to come up, on the report of the Committee on Elections, and come before this body in its own distinct and proper form and at the proper time, and let it be so distinct and clear that it may stand or fall upon its own exclusive merits. The Constitution is not the place to try experiments. And of all places the judiciary is the last upon which we should try that experiment. Let it be first tested by experience in some other mode. Let the Legislature enact it if it be so excellent, and if it work badly repeal it when its failure is made manifest, but do not force it on us at this time, and in connection with so important a branch of our work as the judicial system of the State.

The gentleman speaks of relief to the Supreme Court. I am as firmly convinced of the necessity of relief to the Supreme Court as I ever was, and I deeply regret that the Convention saw fit to vote down the scheme which in my judgement has the least evil of any of the plans which has been proposed to that end. The gentleman deprecates delay, and yet proposes to so constitute the courts that cases must be held under advisement for a year in order to have a consultation with judges who did not hear and are not in position to decide. By whatever name he may call it, it is but a mode of constituting a cumbersome, inconvenient, dilatory and useless interme-

diante court, in which cases are to be held under the supervision of three judges till they can make up their minds before they can be taken to the Supreme Court. It is unnecessary and useless, because the decision when made would carry no weight or force whatever with it; it would be a mere matter of consultation, and would complicate the administration of courts of original jurisdiction without, as I believe, relieving the Supreme Court in the least.

As to that part of the section which provides that the judges shall reside within their district, it is fully covered by the nineteenth section which will be found on the eighth page in almost the same terms, and not to pass now, as it will distort the report of the committee and embarrass our future deliberations upon it. There is, therefore, nothing left of this section that should commend itself to the committee. If the amendment be adopted it will provide a beginning place to introduce the system of cumulative voting.

I believe the committee is ready for a vote, and I do not wish to detain them with any elaborate discussion. I simply bring these things to their attention briefly, and the more particularly so, as I did not wish to speak until every other gentleman had said what he desired to say on the subject. I call for a vote.

The CHAIRMAN. The question is on the amendment of the gentleman from York to the amendment striking out "seventy-three" and inserting "seventy-four."

Mr. M'MURRAY. I now move an amendment to the amendment, to strike out all the words intervening between the words "elected," in the ninth line of the amendment, and the word "courts" in the fourteenth line. The words proposed to be stricken out are:

"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."

The amendment to the amendment was rejected—ayes eight, less than a majority of a quorum.

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

Mr. H. W. SMITH. Is it in order to amend that motion?

The CHAIRMAN. It is not.

Mr. H. W. SMITH. I was going to propose to amend it to read in this way: That the committee report little or no progress, and never sit again. [Laughter.]

The CHAIRMAN. The question is on the motion of the gentleman from Philadelphia (Mr. Stanton.)

The motion was not agreed to, there being ayes thirty-one, less than a majority of a quorum.

The CHAIRMAN. The question is upon the second division of the amendment offered by the gentleman from Fayette (Mr. Kaine.)

M. BUCKALEW. Mr. Chairman: I renew my amendment to strike out "1873," and insert "1883; and on that motion I desire to say a few words to the committee of the whole. It is very evident that at this time of the afternoon, when so many members are absent, it is very difficult to get a majority of a quorum to vote either yea or nay upon any question; and, therefore, it is scarcely necessary at this time to discuss thoroughly the proposition contained in the pending amendment.

This amendment puts the proposition clear of all existing commissions, as I said before, of any of the judges throughout the Commonwealth; and it establishes a rule under which the Legislature can, at the expiration of the pending commissions, form districts under which judges shall thereafter be elected.

Mr. BARTHOLOMEW. Will the gentleman from Columbia give way until I ask for a call of the House to see if there is a quorum present?

Mr. BUCKALEW. I will give way for the present.

The CHAIRMAN. The Chair will inform the gentleman from Schuylkill that there are sixty-eight gentlemen present.

Mr. BUCKALEW. This amendment leaves the question of the arrangement of existing terms open for disposition in another part of this article, or in the schedule; and also the question of filling vacancies in the interval between the present time and the expiration of the period of ten years. It separates this proposed amendment from all those questions of detail to which I referred before. The chairman of the Committee on Judiciary, with great ingenuity, has interposed several considerations that had not been referred to before. The question of filling vacancies in the courts of common pleas, as well as in the

Supreme Court, is a question distinct and separate from all others, and to be passed upon when it arises. I imagine that the Convention may find it convenient—in view of the rule for the filling of vacancies in offices in the State which was reported by the Committee on Suffrage, Election and Representation, that all such offices shall be filled for unexpired terms—to provide that vacancies in judicial districts shall be filled for the remainder of the unexpired terms by the Governor of the Commonwealth by and with the advice and consent of the Senate. My own mind inclines to that arrangement; but we must dispose of this subject before we make provision for these details relative to the filling of offices, for the filling of vacancies, and also some proposed system of electing judges. It is not necessary, however, that any further consideration should be given this subject at this time. When we reach it, we shall dispose of it in such a manner as a majority of this Convention shall think proper.

The gentleman from Lycoming says also—and I refer to this because it is an important question and should be taken in its full force—that the judges of adjoining common pleas districts might be authorized by statute to meet together and consult, and in that manner you might get some such result as is contemplated by this section.

Mr. WRIGHT. Will the gentleman from Columbia give way for a motion that the committee rise?

Mr. BUCKALEW. I will conform to the views of a majority of the gentlemen present.

Mr. WRIGHT. 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 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 to-morrow.

#### THE FUNERAL OF MR. M'ALLISTER.

The PRESIDENT. The Chair will announce that he has appointed the committee to attend the funeral of the late H. N. M'Allister, ordered by the resolution of the House this morning. The names will be read by the Clerk.

The CLERK read as follows:

Andrew G. Curtin, Andrew Reed, John M. Bailey, Wm. H. Smith, Tho's R. Hazzard, J. Alex. Simpson, Geo. N. Corson.

PETITIONS AND MEMORIALS.

Mr. GRASON asked and obtained leave to present a memorial of forty-nine citizens of York county, asking for the recognition of the Almighty God and the christian religion in the Constitution.

The memorial was laid upon the table.

LEAVE OF ABSENCE.

Mr. BEEBE asked and obtained leave of absence for Mr. Howard for a few days from to-day, on account of illness.

Mr. STANTON. I move that the Convention do now adjourn.

The motion was agreed to, and the Convention (at five o'clock and fifty minutes P. M.) adjourned.

# NINETY-FOURTH DAY.

WEDNESDAY, *May 7, 1873.*

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

Rev. J. W. CURRY offered up the following

## PRAYER.

We reverently come into Thy presence this morning, Oh Lord, to invoke Thy blessing upon our hearts. We are grateful to Thee for the preservation of our health and lives during the night which is past. We thank Thee for the light of this day and the privilege we have of calling upon Thy holy name. Thou hast invited us to come boldly to the throne of grace where we may obtain mercy and find grace to help in every time of need. Conscious we are this morning that we are surrounded by death throughout the land. The member of this Convention from Centre county, whose voice was heard in this Hall one week ago, is now silent in death. The electric wire brings to us the sad intelligence that our minister at the court of St. Petersburg (Judge Orr) has also fallen, death having claimed him as its victim. Death enters the high places of honor and trust. The rich and poor fall together. One by one we are passing the way of all the earth. Would it please Thee to prepare us for every dispensation of Thy Providence! May we always be ready to meet the bridegroom at his coming; and do Thou help us at all times to trust Thee with all our hearts. Would it please Thee this morning to inspire us with gratitude and grace to perform our duties with fidelity; and when on earth we have finished our course, in Thine everlasting kingdom save us all with the power of an everlasting life, in Christ Jesus. Amen.

## JOURNAL.

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

## PETITIONS AND MEMORIALS.

Mr. McCLEAN presented a petition of citizens of Gettysburg asking for the acknowledgment of Almighty God in the

Constitution of the State; and also a similar petition signed by fifteen citizens of Adams county, which were laid on the table.

Mr. J. N. PURVIANCE presented a petition of citizens of Butler county praying an acknowledgment of God as the source of authority in civil government to be inserted in the Constitution, which was laid on the table.

Mr. PATTON presented a petition of citizens of Bradford county, asking that a clause be inserted in the new Constitution prohibiting the manufacture and sale of intoxicating liquors, which was laid on the table.

## LEAVES OF ABSENCE.

Mr. W. H. SMITH. I ask leave of absence for Mr. Guthrie for a few days on account of sickness.

Leave was granted.

Mr. KAINE. I ask leave of absence for Mr. Dallas for a few days from to-day.

Leave was granted.

Mr. CUYLER. I was requested by Mr. Knight to ask leave of absence for him for this week, which I do.

Leave was granted.

## M'ALLISTER MEMORIAL.

Mr. CARTER. I beg leave to offer the following resolution:

*Resolved*, That the Committee on Printing be instructed to procure the printing of the proceedings of the Convention on the occasion of the death of the Hon. H. N. M'Allister in memorial form, with portrait; and that five hundred copies be printed for distribution.

The resolution was passed to a second reading and read the second time.

Mr. DARLINGTON. Mr. President: The gentleman from Lancaster has taken the course which was pursued by the gentleman from Fayette (Mr. Kaine) in reference to the Hopkins memorial. That was satisfactorily done and it would be much better if we adopt precisely the same plan. I move that Mr. Kaine have it done and the cost of it stated to us. I do not remember what it was; the gentlemen from Fayette knows.

Mr. KAINÉ. I stated in the resolution I offered in regard to the memorial of Col. Hopkins the parties who should do this work. It was provided that it should be done in this city. In pursuance of that, the Committee on Printing very kindly desired me to arrange the matter. I did so with the Messrs. Lippincott, and they printed and bound five hundred copies for the sum of \$294. The portrait was engraved by Mr. Sartain from a photograph furnished me, and that cost \$75. The autograph cost \$2.50. The printing cost, I think, \$7.50 for the five hundred copies; in all less than \$400, the entire sum. I suppose the Committee on Printing in this case, without any order, would get the printing done at Lippincotts.

Mr. HAY. The entire cost was \$379.

Mr. KAINÉ. Three hundred and seventy-nine dollars, the chairman of the committee states, was the whole cost of the five hundred copies.

Mr. LILLY. I presume we can hardly gauge the cost of this work by the cost of the other. There may be a great deal more matter in this or a great deal less than there was in the memorial to Col. Hopkins, and it will have to be paid for, I presume, according to the amount of printed matter contained in it. I think it would be well therefore to refer the resolution to the Committee on Printing or a select committee to consider the question of cost before we adopt this resolution.

Mr. CARTER. I think, sir, that the course indicated by the resolution is the proper one. The memorial to Col. Hopkins seemed to be satisfactory to all, and it is contemplated by this resolution that this memorial shall be of the same character. Whether it will be more or less expensive, and how much more or less it may cost, of course we cannot tell now. The other work was performed satisfactorily, and I presume this will be.

Mr. DARLINGTON. I move to add at the end of the resolution: "Provided, That the cost does not proportionately exceed that of the Hopkins Memorial." ["No!" "No!"]

Mr. CARTER. That is hardly necessary. The Lippincotts are a very respectable firm.

Mr. DARLINGTON. I will not press it.

The PRESIDENT. The question is on the adoption of the resolution.

The resolution was agreed to.

#### THE JUDICIAL SYSTEM.

Mr. MINOR. I move that the House resolve itself into committee of the whole, on the article reported by the Committee on the Judiciary.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose yesterday they had under consideration the amendment offered by the delegate from Columbia (Mr. Buckalew) to the second division of the amendment of the gentleman from Fayette, (Mr. Kaine,) which was to strike out "1873" and insert "1883." When the committee rose, the delegate from Columbia had the floor. The delegate from Columbia will now proceed.

Mr. BUCKALEW. Mr. Chairman: I shall detain the committee but a short time in concluding my remarks begun before the adjournment yesterday. I was responding to the gentleman from Lycopomg, (Mr. Armstrong,) and speaking to the particular point mentioned by him, that in case of single judicial districts, districts with one judge, the judges of adjoining districts might meet and confer together. It always appeared to me that that was a very clumsy, unwieldy plan, one that would not work. Judges would not care to transact business in districts for which they were not chosen, to the people of whom they owed no responsibility, who had not selected them. The arrangement of terms and business in their respective districts would be inconsistent with the transaction of joint business in the districts together. You would have an imperfect tribunal constituted with reference to objects similar to those which entered into the consideration of circuit courts, but open to very strong objection, not only upon the grounds I have mentioned, but generally upon grounds of inconvenience.

Some members of the Convention have expressed their opinion that the common pleas districts might be made with five or seven judges chosen together and acting as occasion might require jointly for the transaction of reserved business, and with some original jurisdiction. Now, the strong objection to this is that you would make your arrangement unwieldy and get too many judges, scattered too much; it would be inconvenient to get them together; they would not or could not meet

more than once a year, if they met so often, in each county. The advantage of limiting the number to three is that the judges can get together conveniently and meet often. They will be within reach of each other and, with the facilities which we now have by railroads, there would be no difficulty in working a plan with that number.

Mr. Chairman, one point has not been mentioned in this debate. One of the difficulties that the Legislature now encounters in dealing with the judicial districts of the State is the fact that the organization of the courts of common pleas has fallen into considerable confusion. There is no regularity in the expiration of judicial terms; there is no equality in the amount of work imposed upon judges. From time to time the Legislature has interposed to make districts as it best could under great disadvantages, and they have been badly made. They have interposed to add associate law judges here and there throughout the State, capriciously. In some cases they have withheld the assistance of law judges for the transaction of business; in other cases they have placed them where there was no absolute necessity. Then, sir, as under the Constitution the commissions of judges run for ten years, after you have created districts you cannot well change them because commissions expire at different periods of time in the same and in adjoining districts. It is impossible for the Legislature to re-organize the courts of common pleas throughout the Commonwealth in a single statute unless they choose to turn all the judges out of office and then perhaps quarter them upon the treasury respectively until the expiration of the ten year terms for which they were elected. That is not practicable, not to be thought of.

Now, what the Convention ought to do is to relieve the Legislature, the bar, the courts and the people from the existing confused, imperfect, unequal, and objectionable system upon which our common pleas courts are organized. That is a thing the Convention ought to do as a matter of course in some way. Whether you do it upon the plan that has been proposed here or upon some other plan is perhaps not so material. You ought to do something. One of the objections which I have to the report of the Judiciary Committee is that it has not taken hold of this subject of the organization of the

courts of common pleas and mastered the difficulty; it has not provided a means by which the Legislature can make judicial districts equal, make the work of the judges equal, and re-organize them from time to time, as the public necessities demand—upon a general, uniform, equal and fair scheme.

I do not complain of the committee. I suppose they found extreme difficulty in taking hold of this subject and therefore passed it by, making amends for not taking hold of it, by providing a system of circuit courts. Aware of the deficiencies in the system of courts of common pleas as at present constituted, the gentlemen in favor of circuit courts supposed that by that plan they could supplement the imperfect system and thus make up for its imperfections. But as the circuit courts were not ordered we are here front face to this difficulty of the courts of common pleas, and it is our duty to meet it in some way. Yesterday, I submitted an argument in favor of the Easton plan for the organization of common pleas courts in districts of three judges each, the judges acting singly *ad nisi prius* in trying cases and then meeting upon occasion in *banc* for the transaction of business. As far as their sessions in *banc* are concerned, they might meet not only once a year, as the gentleman from Lycoming supposes, but if necessary, they could meet three or four times a year, certainly in counties composing districts alone such as Luzerne, Schuylkill and Lancaster. In such counties, the judges could sit together every two or three weeks if they chose.

I propose, by the pending amendment, that in the year 1883, ten years hence, under a general law districting the entire State, that common pleas judges shall be elected for the whole State, in districts of three judges each. Then at the end of every ten years, the Legislature can re-district the State, by general law, adapting themselves to the changed condition of things at the termination of each decennial period. That in my judgment is a good plan. Where business has fallen off in any section of the State, judicial facilities may be partially withdrawn. In other parts of the State where population has swollen and business increased, additional judicial facilities can be furnished, in each ten-year re-arrangement of the courts of the State; and this system can go on indefinitely in the future and we will never have the present unequal, im-

perfect system repeated. We will be rid of it forever.

One other observation I desire to make. Members of the Convention will see that in the very next section the Committee on Judiciary propose to have courts of three judges in the city of Philadelphia and in the county of Allegheny—not for the purpose of electing them to be sure but for the transaction of business—the courts in this great city and in the county of Allegheny are to be divided and each court is to consist of three judges and they are to transact business very much after the fashion proposed in the amendment for other parts of the State. Philadelphia as I understand it is to have twelve judges separated into four divisions of three judges each. In Allegheny there are to be two divisions of her six judges each to consist of three.

I have still a point to add, Mr. Chairman, and that is this: The gentleman from Chester (Mr. Darlington) seems extremely anxious to precipitate us upon a debate on the subject of reformed voting before the subject is presented and is before us, and he imagines that the present amendment involves the discussion of that subject. Well, sir, I deny that entirely. It is an idle imagination. These courts of common pleas to consist of three judges were proposed by the bar of Northampton county as has been stated. They desired them to be appointed by the Governor of the Commonwealth, by and with the advice and consent of the Senate; and will agree to any reasonable mode of selecting the judges. You can have the judges appointed by the Governor; you can have them elected by the majority of the respective districts; or you can provide that they shall be elected on the plan of reformed voting by which they shall be divided. The plan itself is not connected with any mode of choosing the judges; it has no necessary connection whatever with it.

Now, I will make a short and I suppose a complete answer to the gentleman from Chester on that point. I am for this organization of these common pleas courts no matter how the judges are chosen. I will vote for it, and I am for it if you have them appointed by the Governor or elected by the majority of the district. When we reach that question, if we do reach it, I shall have my own preference as to the manner of selecting the judges and shall vote accordingly; but I am for this organization of the courts of common pleas

on the reasoning which applies to the subject itself as presented by me in my remarks on yesterday. I trust that this is a sufficient answer to the gentleman from Chester, which were somewhat surprisingly injected into this debate.

Mr. Chairman, I hope the Convention will agree to the amendment which I have proposed so that all the commissions of the present judges will quietly expire before this new power to be vested in the Legislature shall be exercised.

Now, some gentlemen may say that a period of ten years is a long time to wait. If we were passing a statute, that would be a very sound remark; but we are making a Constitution, to exist perhaps for a whole century, and if under the necessities of the case and considering the existing interests of judges in their commissions we choose to defer the complete operation of the change until their commissions expire, still the change will be valuable and timely. In the schedule we can dispose of the subject of terms expiring prior to 1883.

Mr. BROOMALL. Mr. Chairman: One of the serious objections to the circuit court system can be urged with equal strength against the proposition now before the committee, and that is, the delay it will occasion suitors. It is contemplated to make triple districts, in which there shall be three judges, who shall sit in review upon one another's proceedings, hear motions for new trials, &c. Take the case of a motion for a new trial. These judges are required to sit once a year in each county. Now, if we are to wait a year or even six months to have every motion for a new trial heard and decided, the result will be that every case will have its motion for a new trial for the purpose of getting the delay, and we will have an accumulation of fictitious business that will make the judicial business of the State appear much further behind than it is now. The delay of the suitors is quite as bad as the denial of justice altogether. Delay of justice is one means of refusing justice; and the delay here is just as great as in the case of the circuit courts. In my district every motion for a new trial is heard and decided within about thirty days of the time it is made, and the delay arising from motions for new trials is so slight that suitors hardly feel it. It will be very different when that delay comes to be extended throughout a year.

Again, this proposition requiring three judges to sit in review of one another's



proceedings is not as good as it appears. You will find what the people of Philadelphia and Pittsburg find now, that the judges have a kind of mistaken courtesy for one another that prevents them from scrutinizing very narrowly into the mistakes of one another. The result will be that very few decisions will ever be made by the three that are not in affirmance of what was made by the one. I venture to say here that from the cities of Pittsburg and Philadelphia as great a percentage of the cases brought reach the Supreme Court as from any other parts of the State. If that is the case, we have the delay without anything in the way of improvement to counterbalance it.

This is a means of dividing the responsibility of deciding right among three judges without bringing any more ability or care to the decision than you have with one. Put the business upon the one, and hold him responsible, and make but a single step to the Supreme Court, and you have a state of things in which the judge will be right, if he knows how to be right. I therefore am against this proposition in all its shapes, as I am against all intermediate courts.

Mr. J. W. F. WHITE. Mr. Chairman: I have listened quietly and attentively from the time this article on the judiciary has been before the committee, without taking any part in the debate; but after the remarks of the gentleman from Fayette (Mr. Kaine) yesterday, I feel inclined to say at least a few things on the present section before the committee.

I cannot vote for the proposition of the gentleman from Fayette. I believe that the people of our State are generally satisfied with our present judicial system. Neither the people at large, nor the profession, so far as my knowledge extends, desire any radical changes in our judicial system. The sentiment was overwhelming throughout the State, so far as I know, against the proposed circuit court and against any intermediate court.

We have had a very simple and a very effective judicial system in our State from its origin. We have had one Supreme Court, and a court of common pleas in every county of the State—these two courts and only these two—with a direct appeal by writ of error or appeal from the common pleas to the Supreme Court.

One of the chief excellencies of a judicial system is the speediness with which a case can be finally determined. There is more dissatisfaction throughout the

State from the great delay in getting cases tried, than from any other source. In some of the rural districts of our State, it is almost impossible to get a case tried for two or three years after suit is brought. I know in our own county it is sometimes impossible to get a case tried under a year or eighteen months. The principal source of dissatisfaction, so far as I know and believe, is in not being able to get a speedy trial and final disposition of the cases. There is also some dissatisfaction owing to the fact that cases in the Supreme Court are not always disposed of at the first term.

I object to the plan of the gentleman from Fayette because I believe it will cause procrastination and delay in the settlement of cases. In the first place, I look upon this arrangement by which three judges shall meet in the different counties as altogether unnecessary. What will these three judges do? They will not be sitting together at the trial of any case. No one proposes that; no one dreams of that. They will meet to hear arguments by counsel on the various questions that arise or that may be brought before them. What are those questions? Questions arising in the orphans' court; as the gentleman from Columbia says, bills in equity, motions in arrest of judgment, questions of law reserved during the trial of the case, or motions for new trials.

Mr. BUCKALEW. And cases stated.

Mr. J. W. F. WHITE. And cases stated. Now, Mr. Chairman, on every one of these questions, except that of a motion for a new trial, the party will have his remedy in the Supreme Court. I repeat, on every question that can arise before these three judges, except on a motion for a new trial, the party can have his remedy in the Supreme Court if the court below commits an error. He need not, therefore, fear any injustice being done by the decision of one judge. Hence a plurality of judges is not necessary to secure justice to a suitor. And it will be of no use on a motion for a new trial. For I would call the attention of the committee to the fact, that, in all those counties where there is more than one judge on a motion for a new trial, the other judges almost invariably defer to the opinion of the judge who tried the case. I apprehend this is so in Philadelphia. I know it is so, in Allegheny county. Where three judges sit on the bench hearing a motion for a new trial, the opinion of the judge who tried the case almost always prevails, and I do

not know that the others ever grant a new trial against the opinion of the judge who tried the case. It is very natural and very proper that such should be the rule, because the judge who tried the case knows far more about it than the other judges can know.

Mr. CUYLER. Will the gentleman permit an inquiry?

Mr. J. W. F. WHITE. Certainly.

Mr. CUYLER. I ask the gentleman whether the same remark precisely would not be true as to the law as well as in regard to the fact. In other words, I ask whether the judge who tried the case might not with the same propriety be said to know the law of the case better than the other two judges; and I inquire whether the gentleman does not know of more injustice being done in the matter of granting new trials on questions of fact than there is in the review of questions of law?

Mr. J. W. F. WHITE. The judge who tries a case has heard all the testimony in the case; he has seen and heard the witnesses; and he is more capable of judging of the effect of the testimony than a person who did not see them and did not hear them, but merely reads what they said. For that reason, a judge who has been present during the trial of the case is more capable of judging of the propriety of a new trial than one who was not present and did not hear the trial. On questions of law, the judge who was not present at the trial may be as capable of judging as the judge who sat on the trial; and yet I will say to the gentleman even on that point the judge who tried the case will always have more influence in a court in settling the question of law than one who was not present and had no part in the trial. The judge who tries a case and rules the questions of law during the trial, dislikes to have his rulings called in question by his associate judges, and they are very reluctant to interfere with his method of trial, or pronounce his rulings erroneous. It is always a matter of great delicacy, and they seldom interfere if the judge who tried the case stands firm to the position he took during the trial. I know that the members of the bar in Ohio say that in their district court, formed somewhat after this model, the common pleas judge who tried the case almost always controls the decision of that case when it came up in the district court, the other judges being always reluctant to in-

terfere with his decision or rulings during the trial.

In my judgment, Mr. Chairman, it is better to have but one judge to decide any question, where you have an appeal from that decision to a superior court. I would throw the responsibility of the decision upon a single judge; make him feel that he is responsible for his decision, make him take that responsibility, and feel that it rests upon him alone. Not only will he feel more keenly that responsibility and be more careful to be right, but he will be more prompt in deciding. I therefore think that this proposed plan is not necessary for any useful purpose, but, with the gentleman from Delaware (Mr. Broomall) I believe it will be productive of a great vexation and delay.

As has been said, motions for new trials, and in arrest of judgment, and hearings on bills in equity, on cases stated, and other matters of argument will be deferred to the court in banc, whenever the counsel wants time. In addition to that, if the judges should alternate as proposed by this plan, each judge holding a term, in succession, it will be a great source of delay for counsel may wish to put off their cases until a particular judge comes round.

Mr. KANE. Will the gentleman from Allegheny allow me to ask him a question?

Mr. J. W. F. WHITE. Certainly.

Mr. KANE. I want to know of the gentleman from Allegheny whether that is not the system now in the county of Allegheny in the district court and in the other court? Do not the judges there meet in banc and decide all questions, as has been proposed in this case?

Mr. J. W. F. WHITE. I will refer to that presently if the gentleman will pardon me a moment. I wish simply to finish the remark I was making on this point, that where a county court is composed of three judges, each hold a term in succession, and three months apart, many cases will be deferred from term to term for the very purpose of getting them tried before a particular judge. In addition to that, we all know that many cases begun at one term cannot be finished until another term, and sometimes go over to a third term. One judge will dislike to interfere with a case begun by another. An order may be made by one judge, that the next judge may think improper, and he must either revoke that order or defer the case until the judge who commenced

the proceedings or made the order returns. Thus cases may be deferred from time to time.

Besides this, in the rural districts, judges cannot meet in banc, oftener than once, or at most, twice a year. I will now refer to the question of the gentleman from Fayette. In Allegheny county the judges are always there; nearly every day during the ten months they hold courts the judges are there; they are always present on Saturdays; they are always present during our weeks of argument. Once a month we have one or two weeks for arguments, when all the judges sit in banc. In the rural districts it would be impossible for the judges to sit together in banc more than once or twice a year. Hence there would be delay, often probably six or nine months' delay in getting cases heard. But in Philadelphia and Allegheny county the judges sit in banc every week, or at farthest every month.

Why is it that we have six judges in Allegheny county and ten or twelve, or whatever the number may be, in Philadelphia? It was not because we wanted the consultation of those judges; it was a matter of necessity. In Allegheny county originally there was but one judge, the judge of the common pleas; then the district court was created with one judge, making two judges in the county. Afterwards there was a judge added to the common pleas, making two judges; then a third added to the common pleas, making three judges; then another in the district court making two there, and lately a third one in the district court, making six in Allegheny county. They were increased from time to time as necessity required, and simply because a smaller number could not attend to the business of the courts in that county.

As a matter of course, they meet frequently for conference and consultation, and there are some advantages in that. And I am inclined to think the only or main advantage of their meeting together, is the conference or consultation of the judges among themselves. My experience as well as my reflection upon the subject, satisfies me that there is no better plan than that of a single judge for each court. And if the judges in Allegheny county could be entirely independent of each other, each holding his own court and responsible for all the decisions and all the business in that court, not dependent upon, or leaning upon others,

I believe our business would progress more rapidly and satisfactorily than at present. It is of great convenience however for these judges to talk with each other and consult together but it often results in delay. When three judges sit in banc, they can do no more business than one judge sitting alone. When we have a remedy for any mistake or error by appeal or writ of error in the Supreme Court it is better to have a speedy decision even if the judge should commit an error, than have the case unreasonably delayed in order to get the opinion of associate judges. If wrong it can be corrected in the Supreme Court. Better this than have the case delayed from term to term in the court below and finally have to take it to the Supreme Court, and get a decision a year or so later than if it had been promptly decided in the common pleas.

The gentleman from Columbia (Mr. Buckalew) says that it is an entire mistake to suppose that this section is to introduce the reformed or cumulative mode of voting. Why then are there to be three judges elected at the same time? This section proposes that the three judges of a district shall all be elected at the same time. Why that requirement? Would it not better to have these judges elected at separate times so as not to have an entirely new court after each election?

Mr. BUCKALEW. If the gentleman from Allegheny will permit the interruption, he must see the necessity of having all the terms expire at the expiration of each ten year period, in order to allow re-arrangement of the judicial districts.

Mr. J. W. F. WHITE. I cannot perceive any necessity in the case whatever. The districts could be arranged so that the judge could go out of office at different times—one next year, another, three or five years hence and so on.

Mr. WHEBBY. Unless the judges are all elected at one time, it will be utterly impossible to change the districts.

Mr. J. W. F. WHITE. Certainly you can change the districts. You could arrange it without any difficulty. If you are to have three judges in each district, it would be better to have the districts constituted just as the three judges in the district of Allegheny county are now composed. We have there three judges in our common pleas. They are elected in different years, and this system could be extended throughout the State, and it would be far better to have that done and

the three judges chosen at different times than to require these three judges to be elected at the same time, because in that event you might have three entirely new judges coming upon the bench at the same time.

I apprehend that the real object of requiring these three judges to be elected at the same time, is to prepare the way for this new mode of electing, what is called reform voting. I do not wish to discuss that question now and I will merely say here that after as matured reflection as I could give to this subject of reform voting, and after a very thorough study of the work composed of the addresses and arguments of the gentleman from Columbia himself, my judgment has settled down decidedly opposed to it in every form and more especially should I oppose it in the election of judges.

If I understand the argument on this subject it is that reform voting is necessary to give representation to the *minority*, that the majority shall not always elect, or elect all that are to be elected. Hence it is contended that in a county like Lancaster where a large majority of the people are Republicans, the Democrats ought to have representation; and in the county of Berks where the political sentiment is largely the other way, the minority of Republicans ought to have a representative. The argument is that the minority shall be represented. Well, how can that possibly apply to the judiciary? What minority is to be represented in the courts? I cannot conceive how that principle is to be applied to our courts. The controversies that are there determined are generally between individuals with reference to money interests. They are contests almost exclusively between individuals, settling private and individual rights. What minority is to be represented by a judge on the bench? It is sometimes said that our courts should be non-partisan, that we ought to have some plan of electing them by which they will not be party men. It seems to me that this is a scheme to make them party men, inevitably and of necessity to make them party men. How is it sir? Why, it is said that where you elect three, the dominant political party will elect two and the minority political party will elect one. Do you not by that very scheme carry politics into the bench? You say to the citizens: "Republicans you are to elect one or two judges. Democrats you are entitled to elect one or two judges!" Not only that,

but you say to the people that "Your judges must be partisans. They must belong to one or the other of these two political parties;" and whichever political party is predominant in any district must have two judges and the other party only have one judge.

I say in place of saving the judiciary from politics, it carries politics inevitably into the election of judges. Not only that, but it places the appointment or selection of judges in the hands of a few leading politicians who control the nominations, the very worst method of appointing or selecting judges. You make their elections inevitably a party question and you make them party candidates. Now when nominations are made for judicial positions the people act upon them irrespective of party affiliations. True the candidates are presented by parties. Each party makes its nomination, and very properly so, because when parties exist in a country, there ought to be party nominations; but the people of this State have long since felt that party politics should not control the election of judges. In one case that I could name here, not long since a candidate of a party which had two thousand majority in the district was beaten and the candidate of the other party elected. Why? Because there were two candidates, one pitted against the other, and the people selected the one they preferred. I could name another district, the district of my friend to the left, where the dominant party nominated a candidate for judge and some of his party opposed him, because they did not want to vote simply on party grounds, and a few of them and the other party combined and elected a man living then in the city of Philadelphia and made him their judge.

The people throughout this State have repeatedly ignored politics and elected a man of the opposite political views from the dominant party of the district; and so in future it will be. I am just reminded by my friend to the left (Mr. Beebe) that in his district they have twice elected a candidate of the minority party. Another gentleman to the right reminds me that in his district that has been the case. So it is all over the Hall. Here we have all around us evidence that under our present mode of electing judges—where one candidate is pitted against another, the people do often ignore politics and select the best man.

But now it is proposed to place a section in the Constitution that will make such a

choice impossible; to say to the people, "No, this party is entitled to two, and the other party is entitled to one." Thus you bring inevitably into politics the election of judges and make them partisans. I hope that no such provision will be put in our Constitution. I like our present judicial system. I like our present Constitution on the subject, and I should be willing now to stop just where we are and take the balance of our existing Constitution on this subject. But I hope especially that we shall not make any such great radical change as is here proposed simply for the purpose of trying an experiment in a new mode of electing judges.

The CHAIRMAN. The question is on the amendment of the gentleman from Columbia to the amendment, striking out "1873" and inserting "1883."

The amendment to the amendment was rejected, there being on a division ayes thirty-nine, noes thirty-nine.

Mr. LILLY. Does it not depend on the chairman's vote?

The CHAIRMAN. That is not the understanding. The vote being a tie, the amendment to the amendment is rejected. The question recurs on the second division of the amendment offered by the gentleman from Fayette (Mr. Kaine.)

The amendment was read for information.

Mr. FULTON. I offer the following amendment to come in at the end:

"In districts composed of three or four counties, no two judges therein shall during their continuance in office reside in the same county. The judges shall have the right to select counties of residence in the order of the date of their commissions. The right of preference between those holding commissions of the same date shall be determined by lot."

Mr. ARMSTRONG. On that particular proposition, I only call the attention of the committee to the fact that the question of the residence of the judges is embraced in the nineteenth section of the report to be found on the eighth page, and it does not seem to be appropriate to consider the question here.

The CHAIRMAN. The question is on the amendment of the delegate from Westmoreland (Mr. Fulton) to the amendment of the delegate from Fayette (Mr. Kaine.)

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the second division of the amendment of the gentlemen from Fayette.

Mr. GREEN. Mr. Chairman: I would suggest to the gentleman from Fayette a verbal alteration in the language of the twelfth line. As it reads now it provides "that the same judge shall not sit oftener than once in every third successive regular term." I would strike out the word "third" and substitute "three;" and the word "term" I would alter to "terms" so as to read, "that the same judge shall not sit oftener than once in every three successive regular terms." A judge cannot sit more than once at one term, and every third regular term is but one term, and he might sit in the intermediate terms and yet be acting consistently with the provision as it is now.

Mr. Kaine. I did not hear the suggestion of the gentleman from Northampton.

Mr. GREEN. I would strike out the word "third" in the twelfth line, and substitute "three" and the word "term" I would alter to "terms," so as to use the plural instead of the singular.

Mr. Kaine. I accept that modification.

The CHAIRMAN. The amendment will be so modified.

Mr. HUNSICKER. I move to strike out all after the word "elected" in the ninth line.

[Several delegates. "Read the words."]

The CHAIRMAN. The words proposed to be stricken out will be read.

The CLERK read the words proposed to be stricken out as follows:

"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 three successive regular terms 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."

Mr. ARMSTRONG. Mr. Chairman: I do not like to see this question come to a vote without expressing some views in regard

to it, which I shall endeavor to do very briefly.

I believe that the people of Pennsylvania are satisfied with their judicial system. It is extremely simple, and as it now stands there is nothing which intervenes between the trial in courts of original jurisdiction and the appellate courts. My earnest advocacy of the circuit or intermediate court was based upon the conviction that the judges of the Supreme Court are not able to transact their business, and that there exists a great necessity for some practical, thorough and efficient relief. The courts of common pleas, I believe, have discharged their duties to the satisfaction of the people effectively without any general complaint, in any respect, except that there are districts which require additional judicial force. In those districts it is proposed in the report that additional judges shall be added. The simplicity of our system ought not to be disturbed without a sufficient reason. I have heard none yet which at all persuades me that it ought to be changed.

The amendment now under consideration is open, I think, to many objections. I will call attention to the fact that that part of it embraced in the seventh, eighth and ninth lines, proposes to enact that which is already embraced by the committee in their report on page eight, section nineteen, and which, therefore, ought not to be considered now. But, examining the whole proposition upon its merits as its friends propose it, I think it will be dilatory and inconvenient, and practically embarrass rather than aid the administration of justice.

The gentleman from Fayette has withdrawn that part of it which distinctly proposes cumulative voting, but nevertheless, it has been placed before this committee and has entered largely into the debate, and I cannot resist the conclusion that it is temporarily withdrawn, only as a mode of making ready, step by step, for the final introduction of the whole cumulative system of voting. This intent becomes conspicuous when it is considered that the whole matter of filling vacancies is also to be moulded in reference to the same expedient. Vacancies are to be filled for unexpired terms in order that successively there may be three judges whose terms shall expire at the same time, and this is a necessity of the cumulative system. It would seem that, in the judgment of some, the whole

framework of the Constitution is to be made to bend to the necessity which the introducing of this new system of voting may require.

I do not believe that anything is to be gained by filling vacancies for the full term, and I speak of it here because it has been referred to it in debate and because it bears directly upon the consideration of the main question. Gentlemen would be strictly and technically correct in saying that it is not the question before the committee, but the whole subject is before the committee in all its necessary connection, and a part of that necessary connection is, first, that the commissions of three judges shall expire at the same time in order that three may be elected at the same time, and to render that possible the vacancy must be filled for the unexpired term. Nothing is gained by that in the election of judges. On the contrary there are advantages in the fact that the terms expire at irregular intervals and that only one judge at a time comes upon the bench by election. They come successively and they come by election according to the exigencies of the times, and it has happened repeatedly, as has been already stated, that judges of opposite politics are elected by the majority party in various districts. It is a high tribute to the honesty and integrity of the people in selecting their judges that they seek the most efficient judicial force.

The gentleman from Columbia suggested in his argument yesterday that the fact that commissions did not expire at a fixed period and that vacancies were to be filled for entire terms was a mere inadvertence, a mere mistake in constructing the article of amendment to the Constitution which was adopted in 1850. I do not so regard it; on the contrary, I regard it as a wise provision, put in of purpose, to invite to the bench the largest and best talent that the office can command. This Convention has emphatically decided by their votes that they are against the appointment of judges; and yet if vacancies are to be filled for an unexpired term by appointment, it is a virtual abandonment of the policy, for such appointment might embrace the entire term except a mere fraction. In such event, we would have a judge appointed and not elected for almost an entire term. If, on the other hand, the vacancy be for a short term, the tenure of the office is too short to invite men of capacity to abandon their practice and assume judicial position.

But without further discussion of that particular question, let us look further at the proposed amendment. It provides that:

"At the general election in the year 1873, and every tenth year thereafter, the qualified voters of each district aforesaid shall elect three judges."

The commissions of judges of common pleas now do not expire at regular terms, and this provision would legislate out of office a very large number of judges, for there are comparatively few whose terms would expire in 1873. If however as proposed by the gentleman from Columbia, (Mr. Buckalew,) the time for the first election were extended ten years, it would not obviate the difficulty, because judges whose commissions expire before that time would necessarily have their places filled by other judges, and their commissions under the Constitution would run for ten years, and they would be at the time fixed legislated out of office; so that upon either suggestion the plan is wholly impracticable.

Gentlemen say that the question of vacancies does not arise here. Why, sir, in my judgment it lies directly across the first part of this section, for it provides for an election of three judges every ten years, when it is absolutely certain, in the natural course of events, that all the judges will not survive their terms, and that vacancies must be filled, and those vacancies are to be filled by the election of single judges. It cannot therefore happen, except by putting the whole judiciary into a straight-jacket for the purpose, that their terms must all expire at just such a period as will admit of the election of three judges at one time.

But let us look again into this amendment. It proceeds:

"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 three successive terms of the court."

Now, these courts within their districts are of co-ordinate and equal jurisdiction. Suppose a bill in equity were pending, and an interlocutory order is made or a preliminary injunction is granted by Judge A at any current term; the next term he must be off the bench and cannot return, under the proposed Constitution, for three successive terms. In the meantime other orders are to be made; perhaps

the preliminary injunction to be dissolved. Will Judge B or Judge C in any ordinary case rescind or even modify the orders of his predecessor? By the ordinary courtesies which prevail on the bench, they do not do it; they avoid it when practicable; and if they do do it, then you have the system which has disgraced the State of New York by which the orders of one judge in equity are reversed by another. It is introducing a most objectionable feature into the judicial system of Pennsylvania. True, the courts of equity are always open, but under such a system as applied to the rural districts, the judges being widely separated, the necessary orders could be obtained only with much inconvenience and delay—and both the evils would be equally developed in proceedings at law or in equity.

Gentlemen may say that having three judges in any one court of a great city, as in Philadelphia, would be liable to the same objection. Possibly in mere theory it might. But the difference is plain: Where three judges compose a court in the city of Philadelphia or the county of Allegheny, or in any county where the district is so large as to require three judges, they are all together and of ready, easy, and immediate access. These courts do practically refuse to interfere with the orders of each other. Judge A or B or C, by whom an order has been made, is always accessible to revise, correct, amend, change, or wholly abrogate his own order. But when it is attempted to apply such a system to the common pleas in rural districts of sparse population and to unite three adjoining districts, you cover an amount of territory in the State which of itself, in my judgment, is a conclusive objection.

For illustration, take the north-western part of the State. The district composed of Erie, Warren, and Elk, extends over fully one-fourth of the State in miles. Adjoining that is the district composed of McKean, Potter, Tioga, and Cameron. That district added would extend the line of the proposed district more than one-half of the State. If now you attach any other adjoining district to those two, I care not which, you embrace well nigh one-fourth of the territory of the State, no matter how you arrange it. If you attach the next district (which would be a convenient arrangement for that purpose) consisting of Clearfield, Centre, and Clinton, the district would then extend from the extreme north-western corner

of the State beyond its centre, either east or west or north or south.

In the sparsely populated districts of the State the system would be wholly objectionable and practically impossible. It would introduce a system into the State which never ought to become a part of our polity, and it is not wise to experiment on this subject. The judicial system of Pennsylvania has been built up on the experience of the State for more than a century. It has worked wisely and well, and I believe is the best and simplest system of any of the States of the Union. It ought not to be thus radically uprooted. If it be done, it will in effect introduce some of the worst features of the New York system, which by their very last Constitution they were compelled to modify.

It would be a mode of constituting an intermediate court in its most objectionable form. It would entail all the inconveniences and delay apprehended from such additional court, and would have none of its advantages. Its decisions would be nothing as to authority except so far as it might persuade the judge before whom the cause was tried, and if more definite powers were conferred it becomes in still stronger form an intermediate court of most defective organization.

I do not attach much consequence to this kind of organized consultation among judges. I do not perceive its advantages either in Philadelphia or anywhere else. In the courts of the United States it is wholly unknown, and the administration of the law in the circuit courts of the United States, as a rule, and also in the district courts, is quite unexceptionable. I would not lessen the responsibility of decision, and where the responsibility is most personal and distinct, it will be the most carefully exercised. What can be the great advantage of this system of consultation? Upon the showing of its advocate, it is to be merely advisory. The judges meet together at stated times, to consult. What for? In the first place, there is much delay necessarily incident to it. They must come together for this purpose according to this proposition, not less than once a year. But the most generally expressed complaint now is that the judges are over-worked, and that they need relief because they cannot do the business devolved upon them; yet it is proposed to impose upon each of these judges one-third of the business of each of the other counties of the district. Thus

there is superimposed upon them a very large amount of additional work, and yet complaint is that they are already over-worked.

But suppose they meet together, what then? When they come to the consideration of cases, it is merely that one judge may advise another, and the case is not one whit further advanced toward the Supreme Court and final decision than before. The only possible advantage to be derived from it would be upon the supposition that judge A, B, or C might find some new additional light, and that he might modify his opinion by consultation with his brethren. Judges of the courts do not consult informally. If they have new and intricate and difficult questions to decide, they advise freely with each other by letter and by person. I have known more than one instance in which judges have gone from their own districts to advise with other judges. In questions of great moment they do it, and they have the right to do it. No harm comes from it. But when a case is once fully tried, let it rest upon the judicial judgment of one man responsible for his decision; do not divide that responsibility among three judges, where you will never be able to say who made the decision in the cause, and where the responsibility for mistakes or errors cannot be clearly attached to any one in particular.

Judges thus met to advise, with the consciousness that their opinion is mere advice, are very prone to attach undue importance to the mere judicial courtesies between each other, and not to reverse each others decisions. It would be very natural for them to say, "this case has been tried; let it go to the Supreme Court," and just in proportion as the case was difficult would this tendency increase. Practically they would not reverse each others decisions; and I undertake to say that such is the experience of Philadelphia. They do not reverse each others decisions upon points of law or upon questions of fact unless in very clear cases, and in such a judge, upon motion for new trial and opportunity for full examination, would correct himself. And if it be an important case it would in any event go to the Supreme Court nine times out of ten. If gentlemen suppose that this system would relieve the Supreme Court in any degree, let them take the experience of Philadelphia and Pittsburgh, and compare their list of cases as they go up, with that which goes up from



other courts of the State, compared either by population or by the number of cases tried on original jurisdiction. Nothing is gained therefore by the proposition. If a judge takes the responsibility of making a decision, and takes upon a motion for a new trial time to revise his decision, consult the authorities, and consider and weigh the case well, he will grant a new trial, if he be wrong; and after such an investigation I venture to say that not one case in twenty would occur in which his brethren of the district would reverse his decision. They would very properly say: "The law of this case may be in doubt, but it has been decided; let it go to the Supreme Court." The pressure in the court for the trial of other causes on original jurisdiction, would be strong and reasonable consideration for such conclusion. The Supreme Court is the proper place and ought to be the only place for reversing the decisions of courts of original jurisdiction. This idea of consultation, is in my opinion, very largely delusive and has not a great deal of weight, and very little indeed to commend it.

The gentleman from Columbia has very persistently called this "the Easton plan;" I do not know by what authority. The lawyers of Easton met together and sent a memorial to this Convention; but rather than refer to it in such a roundabout way, I would prefer calling it the plan of the gentleman from Columbia.

Mr. BUCKALEW. If the gentleman supposes that I originated this plan or ever heard of it before it was read in the Convention, he is mistaken.

Mr. ARMSTRONG. I do not doubt at all that the gentleman in his modesty is entirely willing to strengthen his position in this discussion, if he can, by suggesting that after all the same idea occurred to some one else as well as himself; but I venture to say that the entire State is full of the plan suggested by the distinguished gentleman from Columbia, and this is a part of it.

Mr. BUCKALEW. I desire to say that I never thought nor heard of this particular mode of organizing the common pleas districts until the memorial from the Easton bar was presented here.

Mr. ARMSTRONG. If the gentleman from Columbia has never heard of it, it must be a very new thing indeed. The memorial from Easton, I think, bears upon its face evidence that it has not been considered with the deliberate care which

the gentleman from Northampton, (Mr. Green,) or others, would give to a question of such importance. I do not propose to criticise it; but I call attention to one particular fact only, that one of the main objections urged against the organization of the circuit court is that it may issue a *certiorari* to a justice of the peace and might bring him from one place to another to be heard where the court might be holding its session of appellate jurisdiction. But the same thing is in the present Constitution of the State and has been always. The Supreme Court might now issue a *certiorari* to a justice of the peace. So that this part of the argument is not of much force. As a rule memorials are not very carefully considered and are entitled to respectful consideration, but not much weight. Who ever heard of a meeting of that kind that consulted with such deliberate care as to strike out a line of judicial organization? I would rather take the deliberate judgment of a Convention organized like this, bringing their united experience and judgment to the consideration of such a case, than the hasty opinions of any set of men, however intelligent and learned. I trust to the judgment of the gentlemen who are here giving deliberate and careful consideration to the subject before them, and not to the crude and loose suggestions of men who, in the haste of other business, consider very imperfectly in what they write without responsibility.

I do not propose to weary the Convention by further discussion of this matter. It seems to me unwise to introduce at this time a thorough and radical change when it is not needed and is not called for. Again, I reiterate what I suggested in the debate yesterday that if there be anything valuable in this, it ought not to go into the Constitution because it is an experiment never tried before, and if introduced into the Constitution it is incapable of change for many years. The Legislature have the power to make this change. If it be wise they will make it, and if it should work disadvantageously they can repeal it; but to introduce it into the Constitution is to place it beyond the reach of the people or any power to change, and it becomes an inflexible, rigid rule which, in my judgment, it is unwise to make, and which if made would work to the very great disadvantage of the State.

Mr. KAINE. Mr. Chairman: I am at a loss to understand the gentleman from Lycoming. He warns members of this

Convention to beware of adopting anything of an experimental character upon this subject, and particularly a measure so crude and ill-digested as this. I believe that was his language.

Mr. ARMSTRONG. I did not refer to that except only where I was speaking of the memorial. I do not speak of the memorial from Northampton county now, but in nine cases out of ten all such memorials are undigested.

Mr. KAINE. I understood the gentleman to be speaking of the proposition before the committee. The gentleman from Lycoming then is very much alarmed at this proposition because it is looking toward a different system of electing judges from that which has prevailed heretofore. He deprecates the idea of three judges assembling together for the purpose of holding a court in banc and there deciding points reserved, motions for new trials, and everything of that kind which may be provided for either by an act of Assembly or by a general rule of court. I stated that I did not understand the gentleman from Lycoming upon these questions because he has introduced into his report, which we are now considering, both those propositions. In the twelfth section of the report as we have it now before us, he provides thus:

"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."

That is the very proposition contained in my amendment. It is the very thing I desire this Convention to adopt. I cannot comprehend what difference it makes whether that is contained in the proposition of the gentleman from Lycoming or in that of any other member of this Convention. I do not care whether it comes from him or any other member; all I want is to see it adopted. I have, as I said before, stricken out all in regard to the manner of electing judges and have said nothing about that. The gentleman deprecates the idea of electing them in any other way than that which has heretofore prevailed, and yet in the sixteenth section of the report of the committee which we have now before us, he provides:

"In all elections of judges, whenever two or more are to be elected for the same term of service, each voter shall have as many votes as there are judges to be

elected and may give all his votes to a smaller number of persons than the whole number to be chosen, and candidates highest in vote shall be declared elected."

There is the free or cumulative vote in the gentleman's own proposition; and yet he has been deprecating that here both yesterday and to-day, on every occasion when he has occupied the floor.

I am just informed that this is an amendment put in here and is not the report of the gentleman from Lycoming, the chairman of the committee; that it is the amendment moved by Mr. Dallas, but it does not appear so in the print which I hold in my hand.

Mr. ARMSTRONG. I explained before that the section to which the gentleman referred is not the report of the committee.

Mr. KAINE. So I now understand.

Mr. ARMSTRONG. It was put in in accordance with the express desire of the committee to have it printed for information in this connection.

Mr. KAINE. I now so understand, my attention having been called to it by the gentleman from Columbia (Mr. Buckalew.) I was not before aware that it had been put in in that way.

But, sir, on the subject of the judges sitting in banc, there can be no mistake; it is contained in the twelfth section of the report of the committee, that:

"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."

That is the most important feature, as I consider, that we shall have the advantage of three judges sitting in banc and deciding legal questions of great importance. It has been said by the gentleman from Lycoming that it would not amount to anything. Why if this is put in the Constitution and made a matter of law, the decision of those three judges will be as the decision of one, will be the decision of the court, and from it a writ of error may be taken or an appeal may lie. The gentleman from Allegheny (Mr. J. W. F. White) thought that there would be great trouble upon that point, but he failed to explain, in answer to the question I put to him, how and why no trouble arises from the same proceeding in the courts of Allegheny county. It has been suggested that difficulties will arise in regard to putting these judges all out of office at once.

If the principle be adopted there need be no trouble upon that subject. That can be regulated exactly as it was regulated in the schedule of 1837-38, and when the proper time comes, if no other gentleman will do so, I will move to so further extend the time at which the commissions of the judges shall expire, that there will be no trouble in fixing it in the schedule. In 1837-38, it was provided that :

"The commissions of the president judges of the several judicial districts, and of the associate law judges, of the First judicial district, shall expire as follows: The commissions of one-half of these who shall have held their offices ten years or more, at the adoption of the amendments to the Constitution, shall expire on the twenty-seventh day of February, 1839; the commissions of the other half of those who shall have held their offices ten years or more, at the adoption of the amendments to the Constitution, shall expire on the 27th day of February, 1842; the first half to embrace those whose commissions shall bear the oldest date. The commissions of all the remaining judges who shall not have held their offices ten years at the adoption of the amendments to the Constitution, shall expire on the 27th day of February next after the end of ten years from the date of their commissions."

That was certainly placed in the Constitution then, and if we make any change in the judiciary we shall have to put something of the same kind in the schedule now, so that there need be no trouble on that subject. If the principle of the districts as I have submitted it, and the election of three judges in each district, be agreed upon by the Convention, the residue of the system as it shall be arranged is nothing but a matter of detail. It can all be arranged in the schedule as it was in the Constitution of 1837-38.

When the amendment now pending is disposed of, I shall, if no other gentleman will do it, move to strike out the words "1873" and insert some subsequent period long enough to allow a schedule to be arranged by which the operation of these changes can be made satisfactorily.

The CHAIRMAN. The question is on the amendment of the gentleman from Montgomery (Mr. Hunsicker) to the amendment of the gentleman from Fayette (Mr. Kaine.)

On the question of agreeing to the amendment to the amendment a division was called for, which resulted thirty-one in the affirmative. This not being a ma-

ajority of a quorum, the amendment to the amendment was not agreed to

The CHAIRMAN. The question recurs on the second division of the amendment offered by the gentleman from Fayette.

Mr. NILES. I offer the following amendment as a proviso to come in at the end of the section :

"*Provided*, That all judges now in office shall hold and perform the duties of the same until the expiration of the time for which they have been severally elected."

The amendment to the amendment was agreed to.

The CHAIRMAN. The question recurs on the second division of the amendment, as amended.

Mr. KANE. I move to amend by striking out the words "1873" and inserting "1881."

Mr. BUCKALEW. Mr. Chairman: The motion that I made upon this subject and which has been voted down, was to insert 1883. I did not name the year 1881, because I overlooked the fact that the constitutional amendment of 1850 took effect in 1851. Then there was a re-election of judges in 1861 and again in 1871, except in cases where vacancies had occurred by death or resignation. I would have named 1881 myself had I remembered that it was the regular year for the re-election of judges, and I hope now that the committee of the whole will agree to the amendment.

On the question of agreeing to the amendment to the amendment, proposed by Mr. Kaine, a division was called for, which resulted forty-six in the affirmative, and nineteen in the negative.

So the amendment to the amendment was agreed to.

Mr. NILES. The vote that has just been taken extending the terms of the judges in commission to 1881 accomplishes the object of my amendment, and with the unanimous consent of the committee of the whole I will withdraw the amendment I offered.

Mr. BUCKALEW. It will not do any harm if it be allowed to remain.

The CHAIRMAN. The amendment cannot be withdrawn except by unanimous consent. A motion can be made to reconsider.

Mr. NILES. I ask for unanimous consent to allow me to withdraw it.

The CHAIRMAN. Shall unanimous consent be given?

[Several Delegates. "No! No!"]

Mr. NILES. Then I move to reconsider the vote by which the amendment was adopted.

The motion to reconsider was agreed to.

The CHAIRMAN. The question recurs upon the amendment of the gentleman from Tioga (Mr. Niles) to the amendment.

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the second division of the amendment offered by the gentleman from Fayette, as now amended.

Mr. LILLY. Let it be read.

The CLERK read as follows:

"At the general election in the year one thousand eight hundred and eighty-one and every tenth year thereafter the qualified voters of each district aforesaid shall elect three judges, citizens of this Commonwealth, qualified as aforesaid. 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 judges shall not sit oftener than once in every three successive regular terms 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."

Mr. HUNSICKER. I ask for a division of the question, the first division to end at the words "qualified as aforesaid."

The CHAIRMAN. The amendment has already been divided, and is not susceptible of further division. The question recurs on the second division.

Mr. STRUTHERS. What is the second division?

The CHAIRMAN. It has just been read by the Clerk.

Mr. STRUTHERS. The Clerk did not read the second division as I understand it.

The CHAIRMAN. The question before the committee of the whole is the second division of the amendment of the

gentleman from Fayette, (Mr. Kaine,) which has been just read by the Clerk.

Mr. STRUTHERS. I understood the Clerk to read the whole amendment.

The CHAIRMAN. No, sir. The first division was voted down yesterday. The second division remained and the Clerk read only the second division.

On the question of agreeing to the second division of the amendment proposed by Mr. Kaine, a division was called for, which resulted forty-four in the affirmative, and fifty-one in the negative.

So the second division was not agreed to.

The CHAIRMAN. The question recurs on the section.

Mr. CRAIG. I move to strike out all after the word "changed" in line four and insert as follows:

"The city of Philadelphia and every county containing a population of ———, except as hereinafter provided, shall be a separate judicial district. Every county containing less than ——— population shall be connected with one or more counties so as to form convenient districts. Every such district shall be entitled to at least one judge learned in the law, and as many more as shall be provided by law."

Mr. ARMSTRONG. I desire to say that this suggestion has been very carefully canvassed in the Committee on the Judiciary. Very many suggestions on this subject were made and referred to that committee, but after the most earnest and thorough effort on the part of the committee to inquire into the merits of the plan it has been found impracticable. Counties cannot be divided by limit of population, and that is all this amendment amounts to. Districts cannot be formed with any advantage upon that basis. The amount of judicial business is not regulated by the number of population. The business of the same number of people may be vastly different in amount. To illustrate: Take the oil regions; there they have a population rapidly increasing, and the business in proportion to their population is vastly greater than it is in Delaware or Chester, or any of those counties that are purely agricultural. I believe the suggestion to be wholly impracticable and it would necessarily lead to the re-districting of the entire State, necessitating a very large number of extra judges.

Mr. DARLINGTON. Mr. Chairman: I beg leave to add my testimony to that of

the gentleman from Locoming. I think the proposition to divide judicial districts by any basis of population entirely impracticable. Take, for example, the district which I in part represent. We have not anything like the amount of business that exists in other districts, owing to our interests not being commercial and to our having no iron, or coal, or oil within our borders, but more largely perhaps to the character of our Quaker population, for we do not like strife. There is hardly enough business in our courts to keep the lawyers going.

Mr. CRAIG. Mr. Chairman: The ratio of population in this State to each judge is about sixty-five thousand, in the city of Philadelphia about fifty-two thousand, and in the city of Pittsburg less than forty-four thousand. In the city of Philadelphia and in the city of Pittsburg, it is said that the judiciary are able to keep up their business square; but there are districts in the State where we have but about the ratio entitling us to a judge under such a distribution in which we are not able to keep up the business.

I speak now of the present system, and I take my own judicial district for an example. There are other districts of much larger population than ours where they are able to keep up the business, and to keep it up square; but I undertake to say that no system can be devised which produces a more unsatisfactory result in this respect than the present system. I care little what system you may adopt, the result cannot be more unsatisfactory than the present one. The proposition which I make is to begin with the basis of population, which I know is not the right basis to be carried out to the end because population is not the true basis for the assignment of judicial courts. Take and compare a county, for instance, the county of Butler, with its thirty-six thousand population, and the county of Washington with its population of forty-eight thousand—and I speak of these because they are near to me and I know something about them—and there is much less business done in the county of Washington with its forty-eight thousand population than there is in the county of Butler with only thirty-six thousand. The result of the system that I have proposed would be that in the counties of Delaware and Chester and some other similar counties the judges would have very little business to do; but in all those districts where a large judicial force is required it

could be obtained according to the amount of business done in that district.

I undertake to say that if the report of the Committee on the Judiciary be adopted in this respect, under their assignment of judges to various districts according to the population they now have some will still have too little and some too much. In the district north of me, for instance, an additional judge is not needed, but in the district where I reside he is needed, so that the report of the Committee on the Judiciary will be unsatisfactory in that respect, and any arrangement which we can make under the present system will be equally so. I further make this proposition in view of the idea which has often been suggested that the judges themselves shall be required to perform all such work as is now done by masters in chancery and auditors. In those districts where the work is kept up square and equally it results from two causes: One is that there is not much business to be transacted, and the other is, that they have a ratio of judges greater than would be allowed according to an equal distribution over the State.

Mr. STEWART. I suggest to the gentleman from Lawrence to complete his scheme by designating the number of inhabitants that should constitute a judicial district. I understand that he contemplates that each county with a population beyond a certain number shall constitute by itself a judicial district and that district shall be entitled to at least one judge. I imagine that we can fix a limit, we can fix some number of population which will furnish business enough for one judge and make one district. If there are districts of that population which will furnish business more than sufficient for one judge, the judicial force for that district can be increased. Let it be said that here is a county of a certain population shall be entitled to one judge at least. If the business of that county should be increased or if it should require additional facilities, let it be so arranged that additional facilities can be afforded.

It seems to me that this is proper, and I believe the Convention will reach that conclusion yet, that we shall establish districts on the basis of population, and if each county is not sufficient to warrant a district of that kind the district will be composed of adjoining and contiguous counties. I believe it is a correct theory and I hope the gentleman will complete

his scheme by designating the number of population.

Mr. CRAIG. In answer to that suggestion, I will say that I have left the blank in population to be filled by the Convention in case they adopt the idea. I prefer not to make any suggestion on that point now.

The CHAIRMAN. The question is on the amendment of the gentleman from Lawrence.

Mr. ARMSTRONG. Mr. Chairman: It is proper that I should call the attention of the committee further to this matter. Look at some of the difficulties and inconsistencies of this thing. In the district composed of Chester and Delaware they have a population of one hundred and seventeen thousand two hundred and eight, and yet the judge of that district, in an interview which I had with him personally, told me that no additional force was needed there. I was told by the gentleman from Delaware that the judge can not only do the business but has time to spare. I met another judge from the interior part of the State who is the judge of the district composed of the counties of Union, Snyder, and Mifflin, the population of which is forty-eight thousand six hundred and seventy-nine. The judge told me that it was mere child's play to him. "Why" said he "I have not business enough to keep me from rusting; I do not want you to disturb my district; I would a great deal rather have it larger than smaller."

These things have come to the committee in a variety of forms and from different sections; and population is not, I believe, a sound basis upon which to form judicial districts. If any gentleman will take the trouble to examine the map and look at the districts as they are now formed in the State, he will find them convenient in size and in shape and framed with special reference to the convenience of suitors and judges, as much so probably as could be done by any re-division of the State, and I think more so. I do not think the plan now moved is wise. I think it would lead to a great deal of confusion and trouble to re-district the State when there is no necessity for it; and the committee already provide—and they intend to be liberal in that respect—that wherever additional judicial force is needed in the State it shall be granted in the form of additional judges; and if any gentleman here speaking for his district recommends it, he shall have it. With that safeguard, I think the ju-

dicial system ought not to be changed, but that we ought to be liberal in according additional judges wherever gentlemen upon this floor believe they are necessary.

Mr. CRAIG. At the suggestion of a number of gentlemen, I ask leave to reform the amendment by filling the blank with thirty thousand. I speak of thirty thousand because it will provide for a future increase of population and business.

The CHAIRMAN. The blank will be filled with thirty thousand.

Mr. CAMPBELL. Mr. Chairman: I do not altogether like the form of the amendment offered by the gentleman from Lawrence; but the principle of basing the number of judges upon the population of districts I like. While it may not be true that population is the only sound basis of representation for judges, and that we should consider also the business and other interests of the people, yet at the same time population affords a rule by which the people of the different districts of the State can get from time to time as they need them the requisite number of judges. Under the present condition of things if the people of a district wish an extra judge or two they are compelled to send petitions to the Legislature and influence the members of that body in having an act passed to accommodate them. Sometimes we have the unseemly spectacle of a candidate for judicial position running up to the Legislature and obtaining the passage of a special law, in order that he may be appointed or elected to the judgeship; which the special law creates. Under the present system we experience a great many evils, from the insufficient number of judges and the want of some certain means of supplying the deficiency, and we can only avoid those evils by having a plain, certain plan, by means of which, the requisite number of judges can be obtained. If we have the number of judges based upon population and declare that whenever a county has a certain number of inhabitants it shall necessarily have a judge for that number, then we have a uniform plan, a simple, self-adjusting system that will work in practice and that will give the people of the State not only now, not only ten years from now, but forever, if left unchanged, the number of judges that they may need, without compelling them to go to the Legislature every time a new judge is necessary.

I have drawn up a provision that I intended to offer, something in this shape, (I shall read it as part of my remarks,) embodying the idea that I had in reference to the number of the judges and the manner of electing them. It is as follows:

"In the year 1873 and every tenth year thereafter, the State shall be divided into districts containing not more than four counties; in each of which districts there shall be elected one judge of the court of common pleas for every thirty thousand inhabitants, and one additional judge for every fraction in excess of twenty thousand. Every county containing a population of thirty thousand or over shall be a separate district. The judges of the courts of common pleas shall all be elected upon the same day throughout the State, and for the term of ten years. Wherever in a district there are to be three or more judges elected, each voter may cast as many votes as there are judges to be elected, or may distribute his votes among the candidates as he may deem fit. All vacancies shall be filled by election for the unexpired term. *Provided*, That the judges now in commission shall retain their offices until the expiration of their terms; *And provided*, That the ratio of population to a judge in cities of over two hundred thousand inhabitants shall be forty thousand."

This has the advantage of giving us population as a basis, and also another advantage—that of electing the judges all upon the same day throughout the State and of electing judges in counties containing large populations by the free vote system, so that all classes of people of the respective districts may be fully represented on the bench. While we do not wish to drag politics into the courts, yet there is a necessity for the representation of the different classes of the people, as well political as otherwise; and by having the judges elected by the free vote system, in counties which will have three or more judges, we can have the people properly represented according to the relative strength of the classes among them, and the consequence would be, general satisfaction and the cessation of the numerous complaints that are now heard on all sides.

Mr. LILLY. May I ask the gentleman a question?

Mr. CAMPBELL. Yes, sir.

Mr. LILLY. Was not that proposition voted down?

Mr. CAMPBELL. I was not aware of that. It has certainly not been voted down in this shape. The gentleman is mistaken.

Then in addition to that, Mr. Chairman, I wish to say something in reference to the increase of the number of judges, to what may seem an unnecessary extent. The ratio I put at thirty thousand. I am not particular about that. It may be made thirty-five thousand or forty thousand if gentlemen prefer. If we do away with the present auditing system of our courts, as I hope this Convention will do, and make the judges themselves, audit all the accounts that are presented to them, hear all the matters that are now ordinarily referred to masters or examiners, we are getting rid of a great deal of matter that is corrupting in its influences upon both the judges and the bar, whilst at the same time we are providing a sufficient number of judges to take the place of the formidable array of auditors that are now appointed to do work that properly should be done by the court. I think therefore the ratio fixed, viz., thirty thousand, is not too small. I hope that some proposition embodying the idea of representation according to population will be adopted. I will vote for the proposition of the gentleman from Lawrence if I cannot get anything better, but I think we ought to have some comprehensive self-adjusting system by which the people of the State could get from time to time as many judges as their increasing population and their growing interests require.

Mr. WALKER. Mr. Chairman: I have not heretofore troubled the committee during the consideration of this article; but its action thus far has been in accordance with my sentiments. I voted uniformly and acted quietly against the circuit court system. I am pleased that it was defeated. I voted against the cumulative or limited vote; and I am glad that it has received the quietus that I believe it has.

Mr. CAMPBELL. It has not been voted upon.

Mr. WALKER. Indirectly it has been voted upon and if I read aright the sentiment of the committee when it is directly voted upon it will receive an effectual quietus in this committee and in the Convention.

I have been at the bar for fifty years less a few months. For that time I have practiced under the system as it now ex-

ists. Being somewhat familiar with the sentiment in the portion of the State from which I come with regard to the system, I can speak and speak with truth in regard to that section of the country that we are satisfied with the system with one exception, and that is the part that is now before this committee. I believe that we should have an increase of judicial force in the common pleas, and it is the only point in my judgment where we require additional judicial force. Give us more judges there and competent judges; give them an opportunity thoroughly to investigate every question that comes before them; and there will be less for the Supreme Court to do than there is at present. We have now in the counties of Erie, Warren, and Elk two judges. They are learned in the law, honest, and competent men; but my experience is that the system of two judges in one district works an evil instead of a good.

We have had those judges consulting together, and during the time that I have been at the bar never in one instance in the county of Erie has Judge Wetmore reversed Judge Vincent or Judge Vincent Judge Wetmore; and I venture to say it is the practice throughout the State. We have the two judges named, and they are honest men, they are competent men, they are well learned in the law; but they never have, and I venture to say they never will until the end of their judicial life reverse each other. The judge who tries the cause has all the facts familiar to him. To his mind, to his judgment, to his judicial views, the other yields, and he should yield.

Now, Mr. Chairman, if we give to the common pleas ample force, have special districts, silence this cumulative humbug, bury it where it will never be heard of, we shall have less business for the Supreme Court than we have now. The county of Erie has 65,000 population. I think that 30,000 is entirely too little for one judicial district. I believe that one young, vigorous active-minded man, who will work and whom we can make work, can do all the business in the county of Erie—orphans' court, criminal, equity and all. And then he has the run of the business; he understands it. Gentlemen talk as though we had a circulating court when one judge is in the county at this term and not again for years, that he understands the run of the business and can do it with more satisfaction than the single judge system. It is not so in practice

with us. We have, as I have said, two competent and honest men, but yet we say there are preferences. I may prefer one and you prefer one to another, and a case is put off and prevented from getting tried because it is before the other judge. That is wrong. I want to cut up at the root such a system. Give us one judge; a single district. Give him ample time to attend to all the judicial business that comes before him and the business will be better done, more expeditiously done, than we have had it done before.

These are my views with regard to the question that is before us. I am sorry that I cannot accord with the views of the able chairman of the Judiciary Committee. I have not sympathized with his article throughout; but, wherever I can, I desire to do it because I know the interest that he has taken in it; I know his ability; I know the singleness of his purpose; but when my judgment will not yield, I cannot yield. I believe the single district the right system. It will work well; it cannot help but work well. As at present the districts are formed it works well enough, but the judges are hurried; they have more to do than they can do and the Legislature will not, unless we say they shall, increase the judicial force.

For that reason I am decidedly in favor of single districts, of one judge for every county where the population will allow of it. If it makes a hundred judges, let it make a hundred judges; if it makes one hundred and twenty, let it make one hundred and twenty. What we want is that our business shall be done right, done expeditiously, done to the satisfaction of the litigants—not to the satisfaction of men as politicians, but of men as men, as men having business and desiring that that business shall be adjudicated upon by a learned gentleman of the law and an accomplished jurist.

The CHAIRMAN. The question is on the amendment offered by the delegate from Lawrence (Mr. Craig.)

Mr. STEWART. I move to amend the amendment by striking out "thirty thousand" and inserting "forty thousand." At the suggestion of some gentlemen around me, I will say "forty-five thousand."

The amendment to the amendment was rejected, there being on a division, ayes thirty-six, noes thirty-seven.

Mr. LILLY. I move to amend the amendment by striking out "thirty thou-



sand" and inserting "sixty thousand." ["No!" "No!"] Well, I will say "fifty thousand."

The amendment to the amendment was rejected.

Mr. CHURCH. I move to strike out "thirty thousand" and insert "forty thousand."

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the delegate from Lawrence (Mr. Craig.)

Mr. WHERRY. Before the vote is taken allow me, not as a representative of the legal fraternity, to enter my protest against the passage of this proposition. It is a fatal blow at justice. It affects the interests of every citizen of Pennsylvania. It is based upon a wrong theory—the theory that justice is a matter of representation, that justice can be administered or granted by the representatives selected and chosen by the people.

I do not purpose to enter into an argument on this subject, but simply to call the attention of the committee to the undoubted evil tendency of this thing, to the certainty that it will overturn, upset, and uproot all that is honest and just and righteous in our judiciary of to-day. There is one point to which I will call attention—the tremendous increase of the judicial force to one hundred and twenty judges. The application of this proposition will increase the judicial force of this State to one hundred and twenty common pleas judges. ["No."] It does do it. Let gentlemen examine the statistics for themselves. Now, are the people of Pennsylvania prepared for this immense increase of the cost of the judicial system? Did they contemplate it at all? Do they demand it? It will give, within a very small trifle, three law judges in the district which I have the honor to represent. One law judge has done the business of that district for years and years.

Mr. CRAIG. The gentleman from Cumberland is laboring under a mistake. The amendment provides that each district shall have at least one law judge, and as many more as the Legislature shall provide. The amendment is not that there shall be one law judge for every thirty thousand population, but only that thirty thousand shall be the minimum.

Mr. WHERRY. I acknowledge, then, that I was mistaken.

The CHAIRMAN. The question is on the amendment of the delegate from Lawrence (Mr. Craig.)

Mr. MACCONNELL. I ask that it be read.

The CLERK read as follows:

"The city of Philadelphia and every county containing a population of thirty thousand, except as hereinafter provided, shall be a separate judicial district. Every county containing less than thirty thousand population shall be connected with one or more counties so as to form convenient districts. Every such district shall be entitled to at least one judge learned in the law, and as many more as shall be provided for by law."

Mr. WHERRY. I rise to explain. That was not the proposition handed to me at all as being the proposition before the committee. Therefore, I was mistaken.

Mr. ANDREW REED. I should like to inquire of the mover of this amendment what he would do in a case of this kind: Suppose there is a county having but fifteen thousand population, and all the counties around it have more than thirty thousand; where would he attach it?

Mr. CRAIG. I would attach it to any of them, and this proposition will give that district one judge and if the business of the district requires two, the Legislature will provide another.

Mr. ANDREW REED. I understand that the amendment provides that every county that has over thirty thousand population shall have one judge.

Mr. CRAIG. "Except as hereinafter provided."

The CHAIRMAN. The question is on the amendment of the delegate from Lawrence (Mr. Craig.)

Mr. WALKER. I move to amend the amendment by striking out "thirty thousand" and inserting "forty-five thousand." Allow me to say, Mr. Chairman, that I am in favor of this system if we can carry it out aright. If we leave it at thirty thousand, it is dead, and those who are opposed to the system proposed by the gentleman from Lawrence understand that. Its friends should accommodate themselves to that sentiment in the House. My judgment is that thirty thousand or thirty-five thousand is not large enough. It ought to be fifty thousand, in my view; but if we cannot have fifty thousand, let us have forty-five thousand. I hope the amendment I have offered will be made.

The amendment to the amendment was agreed to; there being on a division, ayes fifty-six, noes twenty-eight.

The CHAIRMAN. The question recurs on the amendment of the delegate from Lawrence, (Mr. Craig,) as amended.

Mr. ARMSTRONG. Mr. Chairman: As the ratio stands now, I believe it is fixed at forty-five thousand. Take Delaware county; what are you to do with it? Take Greene county, which is in the extreme south-western part of the State and contains a population of twenty-five thousand eight hundred and eighty-seven. Washington county, immediately to the north, has forty-eight thousand; Fayette immediately adjoining it on the east has forty-three thousand; and it has no other bounds. What will you do with it? If you put it with either one of the adjoining counties, you have too much.

Mr. KAINE. Fayette and Greene would remain as they are.

Mr. ARMSTRONG. Fayette and Greene would remain as they are, and they would have a single district with how much population? Sixty-nine thousand. Then you have some thirteen thousand in excess of the ratio adopted. But gentlemen say, then give them two judges. That is destroying the principle and going back to the very place where we are now, adapting the number of judges to the population and business.

I agree with the gentleman from Erie (Mr. Walker) fully in the purpose he has in view, which is, to add the necessary judicial forces to the State. I am with him to any extent that the Convention may deem prudent and proper in that regard; but the division upon the basis of population is impracticable; it cannot be done; and any man who takes up the map and the population will discover in a very little while that he cannot district this State in a way which will make population the basis.

In view of these facts, why not let these districts stand just where they are, well-devised, and when a county attains to a population or a business which requires an additional judge or that it should be made a separate district, let it be so made. It is a question peculiarly within the province of the Legislature, and I think it should rest there. Let the districts stand, but add liberally to the force of judges, so that there may be no delay caused by the overworking of judges.

One further remark. I believe that the experience of the best judges of the State

and of the majority of lawyers in large practice is, that if judges are not well worked and kept busy, they do not make good judges; they deteriorate. No greater calamity could fall upon the State than to have a large body of judges scattered throughout our territory with not enough to do.

I will not detain the committee by prolonged discussion. I think the whole thing ought to be voted down.

Mr. BROOMALL. Mr. Chairman: The gentleman from Lycoming (Mr. Armstrong) asks with some force, what is to be done with Delaware county with a population of thirty-nine thousand, with the neighboring county of Chester, to which we are now attached, with a population of seventy-eight thousand, and with no county around to which we can be attached, unless indeed it be to the State of Delaware or New Jersey, across the river. [Laughter.]

The fact is, it is utterly impossible to district the State for any purpose, judicial, legislative, or Senatorial in the Constitution; particularly is it impossible to distribute the judges according to population. Populations change. The same population becomes not only more or less numerous, but it becomes more or less litigious.

There is another element of change that requires that this thing should be let alone in the Constitution, and that is, that judges differ. Something has been said about the judge in our district, who is capable of trying all the causes in that district and the district of the gentleman over yonder in the corner, from Montgomery (Mr. Boyd;) but the judge that may follow him may not be capable of trying all the causes in the present district with a population of one hundred and seventeen thousand, doubling as it does the average population of a law judge in the State. How can we in a Constitution accommodate all these changing circumstances? Judge Butler may die, or he may be put on the supreme bench instead of where he is, and there may follow him one or the other of my colleagues.

Mr. DARLINGTON. "Not if the court knows itself." [Laughter.]

Mr. BROOMALL. Well, probably the court does not know itself with respect to my other colleague, (Mr. Hemphill,) who is a very good man; and we may then want a judge in Delaware county; we may then want two in the district. Another

change may take place in two or three years more and we get a judge as good as the present one, and then we shall want but one.

The fact is, these things change too much to be fixed in the Constitution. We must give up the idea of apportioning the judges in the Constitution. We must entrust that matter to the Legislature, which can accommodate the laws to the changing circumstances of the districts.

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

Mr. BROOMALL. Certainly.

Mr. KATNE. I wish to inquire of the gentleman from Delaware if he did not vote for fixing the number of judges of the Supreme Court, in the Constitution, at seven?

Mr. BROOMALL. I did not. I was always for retaining the number at five. I was not here when the number was increased to seven. If I had been, I would have voted against it. I care very little about that, however. A Supreme Court of seven judges is not much more than one of five. It is a little worse, being a little slower in its operations. Still I have no particular objection to that; and I have no objection to allowing the Legislature to give an additional judge wherever he is wanted, and when the time comes at which he is not wanted, abolishing him, letting him go. I want to leave these matters to a body that can change them to suit the constantly changing circumstances. That is why I do not agree to that part of the report of the committee that proposes to assign new judges to districts, because I do not want to have these things made unalterable for a term of years. I want to have them so that they can fluctuate as the necessity for change arises.

Mr. ARMSTRONG. The report of the committee does not make the assignment of the additional judges inflexible, but leaves it entirely to the Legislature.

Mr. BROOMALL. Still I am opposed to doing anything of that sort in the Constitution. I want to leave that matter to the Legislature. Something has been said about the Legislature being unwilling to grant additional courts where they are required. That is not my experience in the Legislature. I believe we could get three judges for our district by law, if we were to apply for them. I think there is no trouble about that. I think all districts that deserve to have two judges have got them, or if there are any that

still need them that they can get them without any trouble. But, sir, the Legislature is the body to fix this thing, and not the Constitutional Convention, and hence I am opposed to this amendment.

Mr. NILES. Mr. Chairman: The object of this amendment I suppose is to give us separate judicial districts and to that I am agreed. I only desire now, however, to call the attention of the committee to the fact that by the amendment which they have just adopted, of the delegate from Erie, while they are seeking for separate judicial districts in the State, excluding Philadelphia and Pittsburg, they only give us nineteen. There are only nineteen counties in the State, after all this fuss and trouble about separate judicial districts, that will have the benefit of this provision, whereas if we had retained the original proposition of thirty thousand, thirty-nine counties would have had separate judicial districts. While you are professing to give us relief, you are giving us none. You exclude nearly all the purely rural districts in the State. It is true that in Lancaster and Berks and Schuylkill and Luzerne, and some of the large counties with not as much territory as we have, you give them separate judges, but in a great majority of the counties of this State you still keep us burdened with what the delegate from Lawrence calls the old difficulty. I am opposed to this and I hope we shall vote the whole thing down.

Mr. CRAIG. Mr. Chairman: I believe that the virtue of the proposition which I have made consists in keeping the minimum down tolerably low, and that the amendment which has been made by the committee inserting forty-five thousand as the minimum virtually kills the proposition; it opens it to the objection made by the gentleman from Lycoming, which on that basis I think is unanswerable. In the proposition which I made, however, as any gentleman will see by reading it closely, it is not difficult to understand how it can all be arranged on the basis of thirty thousand. It is that every county containing less than thirty thousand population shall be connected with one or more counties, whether they shall have less or more than thirty thousand people, so as to form convenient districts, and every such district shall be entitled to at least one judge and as many more as may be provided by law. No county if it have eighty thousand population shall be entitled to take more than

one judge and the Legislature would not afford it more than one unless the business required it.

I know it is true, as I said when I first rose on this subject, that population is a basis which cannot be pursued beyond the mere initiation of a system; it cannot be pursued to the end for it fails immediately on the addition of one judge. You may take population as a basis for one judge in a district, but you can do no more. The business, after that, must determine how many more it shall have; and I think gentlemen are mistaken when they say that thirty thousand is too small a basis, because, as I said, when I first rose, this proposition is made with a view to impose upon the judges the performance of all judicial work such as they have never heretofore been in the habit of doing, including that now done by masters in chancery, an auditor in the orphans' court, common pleas, and so on.

Mr. BEEBE. I move to amend by striking out "forty-five thousand" and inserting "thirty-two thousand."

The CHAIRMAN. The question is on the amendment of the gentleman from Venango to the amendment.

Mr. J. R. READ. I raise the question of order.

The CHAIRMAN. The amendment is not in order in that connection. Other words would have to be connected with those already inserted.

Mr. BEEBE. I move then to reconsider the vote by which the amendment was agreed to inserting "forty-five thousand."

The CHAIRMAN. The motion to reconsider can be entertained if it is seconded.

Mr. CORBETT. I second it.

The CHAIRMAN. It is moved that the vote by which "thirty thousand" was stricken out and "forty-five thousand" inserted, be reconsidered. The question is on the motion to reconsider.

The motion was not agreed to; there being, on a division—ayes thirty-four, noes forty.

The CHAIRMAN. The question recurs on the amendment of the delegate from Lawrence as amended.

The amendment was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. ARMSTRONG. I should like to make a verbal correction in the section at this point. In the fifth and sixth lines the words "organized for said courts"

are unnecessary. I think it will improve the phraseology to strike them out.

The CHAIRMAN. If there be no objection the words "organized for said courts" will be stricken out. The Chair hears no objection and those words are stricken out.

Mr. MANN. I move to amend the section by adding:

"No additional law judge shall hereafter be elected in any district composed of more than one county."

Mr. Chairman, I have offered this amendment because it seems to me to be in harmony with the votes which have been given on this question. The proposition of the gentlemen from Fayette was voted down chiefly because of the argument made by various gentlemen in opposition to double or triple districts. The arguments made against that amendment were all or nearly all of them based upon the idea that the districts ought to be single, that there ought to be no divided responsibility in these courts; and according to my experience and my judgment there should be but one judge in a district to whom all parties interested can look for the justice that is to be awarded to them. I believe that no delegate will rise in his place and from his experience of the effect of double districts speak in favor of them.

The gentleman from Erie who has had large experience in such a district condemns it and all the arguments made on this subject condemn it. They all point to the evil of it, for it is true I believe that in no district where there is more than one judge has the decision of the judge who tried a cause or made a decision upon a motion in court been reversed by his associate. So far from doing that, they will not even listen to an argument on the subject. I have the fortune or misfortune, which ever it may be—it seems to me to be the misfortune—to live in a district of that kind; and in my district the judge who entertains a motion or tries a cause has the entire control of it; and no matter what the circumstances may be, the other judge will not listen to a motion in regard to it; and in one case where a decree was made that was notoriously wrong the judge upon the bench said that he would not have made it, but he could not listen to the proposition to change it because his associate had made it, and his associate did not go there for months, nearly a year and there was no remedy because the other judge would not listen to an argu-

ment to change the order. Causes and motions are continually delayed because the associate will not listen to a proposition to decide a motion entertained by his brother upon the bench, and we are continually delayed by this double-headed system of judicial districts.

It is for that reason that I have offered this amendment, because I believe that the idea of the chairman of this committee in regard to additional law judges, (although he seems to be correct in most of his propositions,) is certainly against the experience of those who have been connected with such districts. I hope, therefore, that this Convention will decide in favor of dividing districts which need additional judicial force rather than giving additional judges; and that is the proposition which I have made, that in all districts which can be divided, where an additional judicial force is needed, they shall be divided rather than to make additional judges in existing districts. And this proposition will require that the commissions of all existing law judges when they expire shall not be filled by re-election, and I submit to gentlemen who have had some experience on this question that the idea of the gentleman from Delaware that a judge when he is not needed can be dismissed under the present existing Constitution is a mistake. Once fastened upon a district, he never can be dismissed by legislation, as has been shown by the experience of past years. There is nothing but a constitutional provision that will save those districts that have had two judges given to them from a repetition of it.

I ask the attention of the gentleman from Delaware and all other delegates who are interested in this question to that fact. I state it here as a proposition that no district having an additional law judge will ever be relieved from it unless some provision is made in this Constitution requiring it. We all know the reasons which bring that about. It is so much pleasanter to make provision for our friends than it is to dismiss them, that it will not be done unless there is an absolute requirement making it necessary, and that is the chief reason why I have offered this amendment, not out of any disrespect for any judge we have ever had in our district, or out of any feeling toward any other additional law judge, but simply because I believe it would give far greater satisfaction to divide a district. I am sure it would be more satisfactory to our dis-

trict to divide it and give us either of the existing judges—the two together are constantly in the way of each other, and by that means justice is delayed. I hope, therefore, this amendment will prevail.

Mr. J. N. PURVIANCE. I move that the committee of the whole 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 (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. 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-seven minutes 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. EWING. 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, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose this morning they had under consideration the amendment offered by the delegate from Potter (Mr. Mann) to the fourth section of the judiciary article.

The amendment will be read.

The CLERK. The amendment is to add to the section these words:

"No additional law judge shall hereafter be elected in any district composed of more than one county."

On the question of agreeing to the amendment, a division was called for, which resulted sixteen in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. HUNSICKER. Let it be read.

The CLERK read as follows:

"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."

MR. KANE. I offer the following substitute for the section:

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

That is the section as it stands at present, with the exception of inserting the word "three" in place of "five." The third section of the fifth article of the present Constitution, the judiciary article, is in these words:

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

I have stricken out the word "five" and inserted the word "three." Unless the Convention desires to make some very considerable change in this section of the fifth article of the Constitution, I think it would be well to leave the present language as it is. The section as it is now before the Convention reads thus:

"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."

Now, I suppose that it is not the intention of the Convention or of this committee of the whole, judging from the votes they have given, to make any material change at least in the court of common pleas. Therefore I think it would be well to retain this provision of the Constitution as it now stands. I would provide that no more than three counties should be put into one judicial district. I think that would be an improvement.

MR. DARLINGTON. Mr. Chairman: I was merely going to say that with regard to three counties forming a judicial district, it might embarrass the future. If it should afterward be found expedient to cut off smaller counties in some districts, it might be inconvenient to find places wherein to put them. If the districts be limited to three counties it may embarrass the future formation of districts. The limit had better remain as it is. It does not preclude the Legislature from making a district with less than five counties, but there may be occasions when it

may be necessary to include five counties in one district.

MR. KANE. At the suggestion of the gentleman from Chester (Mr. Darlington) and other gentlemen near me, I modify my substitute by inserting the word "five" instead of the word "three." Then the substitute will be precisely the old Constitution as it now is.

MR. DE FRANCE. Then what is the use of putting it in at all?

MR. ARMSTRONG. This section is substantially that which constitutes the third section of the fifth article of the Constitution as it stands. When that section was written, there were districts of more than five counties and by this constitutional amendment it was reduced to five. There were districts in the State which embraced more counties. It was originally written by the Committee on the Judiciary three, until it was found that there were districts in the State which embrace four counties. It was intended to cover them at the same time that it was our purpose to reduce the number of counties in a district to the lowest possible standard without necessitating the re-districting of the State. If the gentleman's amendment should prevail and the districts should be reduced below four counties, it would oblige the State to be re-districted.

MR. KANE. If the gentleman will allow me to interrupt him, I will say that I have modified my amendment so as to conform precisely to the article of the present Constitution, leaving the number of counties in a district at five.

MR. ARMSTRONG. My objection to five is that it was our purpose to reduce the number of counties in a district as far as possible. It was reduced purposely to four. That is the only difference between the section as reported by the Committee on the Judiciary and the substitute presented by the gentleman from Fayette, and I do not regard that as important further than that I consider the substitute would be a step backward, our purpose being to reduce the number of counties as much as possible and this substitute gives the Legislature permission to keep them at five. If we do reduce them, I should be in favor of reducing them to three.

MR. KANE. I would like to ask the chairman of the Committee on the Judiciary what he means by saying in the section under discussion "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."

Mr. ARMSTRONG. I will reply to the gentleman that we propose by this report to strike out the associate judges. As at present constituted, the common pleas courts consist of a president judge and at least one associate judge. There is therefore this specific change which necessitates the retaining of these words.

Mr. CORBETT. I am opposed both to the amendment and to the section as reported by the Committee on the Judiciary. It is proposed by this report to abolish the office of associate judge. If that be done, I do not see how it can be possible in the western part of the State, that the people who are litigants can have the redress that they ought to have and have it convenient to themselves. I am decidedly in favor of reducing this to either two or three. I move to amend the amendment by inserting "three."

The CHAIRMAN. The question is on the amendment of the delegate from Clarion (Mr. Corbett) to the amendment of the delegate from Fayette (Mr. Kaine.)

Mr. ARMSTRONG. I will simply remark that that necessitates of course the re-districting of the State.

Mr. Kaine. How many districts would it affect?

[Several Delegates. "Three."]

Mr. ARMSTRONG. Three districts. It would affect the fourth district, composed of the counties of Tioga, Potter, McKean, and Cameron; also the sixteenth district, composed of the counties of Franklin, Bedford, Somerset, and Fulton; also the twenty-second district, composed of the counties of Monroe, Pike, Wayne, and Carbon. Then there are quite a number of districts that contain three counties. It is a question so entirely within the province, and appropriately so, of the Legislature that I think we ought not to disturb the districts in this way.

Mr. CORBETT. This involves the question in my opinion whether associate associate judges unlearned in the law are to be abolished, because if there are to be four or five counties in a district I do not see how the wants of the people of the State are to be accommodated by districts of that size.

Mr. ARMSTRONG. The question of associate judges will come up appropriately under another section, where it is distinctly raised.

The CHAIRMAN. The question is on the amendment of the delegate from Cla-

tion to the amendment of the delegate from Fayette, striking out "five" and inserting "three."

Mr. BIDDLE. I rise, not to make any remarks, but simply to ask gentlemen from the three districts composed of more than three counties whether they would like them cut down. One gentleman close by me from one of those districts says he thinks it would be an improvement. Now, if the gentlemen from the other two districts will say the same, I shall certainly vote for the amendment of the gentleman from Clarion; but I should like to know how that is. I want to oblige gentlemen living in these districts.

Mr. NILES. I live in the fourth district, and as a delegate from that district I can only say that I should very much hate to see this amendment adopted. We are well satisfied with our district now. Our judges can do the work. We have two judges.

Mr. LILLY. The twenty-second district, I believe, is composed of Monroe, Carbon, Pike, and Wayne. I think the judicial affairs of that district are up as close probably as those of any district in the State. In my county I am informed that cases which were entered in January were tried and disposed of in March, this year. It is that close, and I presume the rest of the district is like that county. We are very well satisfied with our president judge. He is about as good a one as there is in the State.

Mr. ANDREW REED. Mr. Chairman: I am opposed to the amendment of the delegate from Clarion. This is a matter that I think should certainly be left to the discretion of the Legislature. If one judge could properly do the business in a district of four counties, and there might such a case happen when the counties are divided, it would be wrong for us by constitutional provision to prohibit that from being done. I am in favor of the principle of single districts, not having two judges in a district where it can properly be avoided. But there may be cases where even one judge can do the business of four small counties; and here we tie up the hands of the Legislature from doing it when they have the evidence before them that it would be for the best interests of that district that it should be so. I think we should leave it to the discretion of the Legislature and let the Constitution stand as it now is in this respect.

The CHAIRMAN. The question is on the amendment of the delegate from

Clarion to the amendment of the delegate from Fayette.

The amendment to the amendment was rejected.

Mr. ALRICKS. I offer the following amendment to the amendment to come in at the end of the section.

The CHAIRMAN. The Chair would remind the delegate from Dauphin that there is an amendment to the section pending.

Mr. ALRICKS. This is an amendment to the amendment.

The CHAIRMAN. That is in order, but the amendment in the opinion of the Chair is not germane to the amendment.

Mr. ALRICKS. I move to add it to the amendment.

The CHAIRMAN. If the gentleman insists upon it it will be received at this time. The Chair will remind the delegate from Dauphin that the amendment offered by the delegate from Fayette was modified so as to limit the number of counties the Legislature could unite in a judicial district.

Mr. ALRICKS. I thought that had been voted down.

The CHAIRMAN. The amendment offered by the member from Clarion to the amendment of the delegate from Fayette was voted down. The question is on the amendment of the delegate from Fayette. If the delegate from Dauphin insists on his amendment to it, it will be received.

Mr. ALRICKS. I will wait.

Mr. BIDDLE. Then the question is on five counties.

Mr. ALRICKS. Let my amendment to the amendment be read.

The CHAIRMAN. It will be read.

The CLERK read as follows:

"That a judicial district shall contain a population of not less than forty thousand inhabitants, and the Legislature shall hereafter make such further judicial districts as may from time to time become necessary."

Mr. ARMSTRONG. That is the law now except as to the limitation of forty thousand. It does not seem to be expedient to place a limitation on the Legislature which might be very embarrassing, and I think it would not result in any very great advantage.

Mr. J. N. PURVIANCE. I move to strike out "forty thousand" and insert "thirty-five thousand."

The CHAIRMAN. An amendment to the amendment is already pending. The question is on the amendment of the dele-

gate from Dauphin to the amendment of the delegate from Fayette.

Mr. BARTHOLOMEW. I understand we voted down this morning the proposition to limit judicial districts to thirty-five thousand people.

The CHAIRMAN. This is a separate amendment.

Mr. BARTHOLOMEW. It is the same thing; it limits judicial districts to thirty-five thousand people.

Mr. BROOMALL. I ask that the amendment be again read.

Mr. ALRICKS. I withdraw my amendment until the other is voted on.

The CHAIRMAN. The amendment to the amendment is withdrawn.

Mr. BUCKALEW. Mr. Chairman: I am in favor of the amendment offered by the gentleman from Fayette because it leaves the Constitution exactly as it is at present on this subject. There has been no abuse of this power, and it is hardly worth while to have an amendment to the Constitution upon this subject. Now, if we take the counties of Cameron, Elk, Forest, and others, it may be convenient to have a number of counties put together; in fact it is a necessity at times. This can be safely trusted to the Legislature. I hope this amendment will be passed, and that will leave the Constitution as it is.

Mr. ARMSTRONG. Mr. Chairman: There is no change, not a word, in the report of the committee in the section under consideration except only the words "as herein changed," which become necessary if the associate judges shall be abolished, which question we have not yet reached and which for the present should therefore be retained in this section; and the other difference is the word "four" instead of "five." It seems to be merely voting out the section of the committee to vote the same thing in again by way of amendment. It seems to me that no substantial good is gained by it and there is no reason which ought to induce the committee thus to set aside the action of the Judiciary Committee in making their report.

Mr. KAINE. I call the attention of the chairman of the committee to the fact that there are other differences between the language of this section and of the present Constitution. The language of the present Constitution is: "Until otherwise directed by law," and those words are to be found in this section; but the Constitution as it is now reads: "Until otherwise directed by law, the courts of



common pleas shall continue as at present established," while the report of the committee is: "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." The words "jurisdiction and powers" are in this proposed section and not in the present Constitution.

Mr. ARMSTRONG. I have no objection to striking out those words. They did not occur to me at the moment. It is the same in substance.

The CHAIRMAN. The question is on the amendment of the delegate from Fayette (Mr. Kaine.)

The CHAIRMAN put the question and declared that the ayes appeared to have it.

Mr. ARMSTRONG. What have we been voting on?

The CHAIRMAN. The amendment of the delegate from Fayette.

Mr. ARMSTRONG. I ask for the reading of it. I think there has been some misapprehension in regard to it.

The CHAIRMAN. The judge will withdraw his decision for the present. He will remind delegates that hereafter, for the purpose of expediting business, when he has put a question to the vote, he will refuse to recognize any gentleman who may be upon the floor. He merely gives notice at this time so that all will understand it. Gentlemen who have anything to say on the pending question will say it before the question is put. The Chair withdraws his decision. The Clerk will read the amendment of the delegate from Fayette (Mr. Kaine.)

The CLERK read the amendment, which was to strike out the fourth section as amended and insert in lieu thereof the following:

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

Mr. DARLINGTON. I move to amend the amendment of the gentleman from Fayette by inserting after the word "established" in the second line, the words, "except as herein changed."

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment offered by the delegate from Fayette (Mr. Kaine.)

The amendment was rejected; there being on a division, ayes twenty-nine; less than a majority of a quorum.

Mr. ELLIS. I was going to remark, if I may be indulged in a word, that I think the committee hardly intended what they have just now voted, to retain the words "the jurisdiction and powers of." That would give the Legislature the entire power to change the jurisdiction and powers of the courts of common pleas. We say it is a constitutional court, and yet we confer upon the Legislature the power to alter it at will both as to its jurisdiction and powers.

Mr. ALRICKS. I now renew my amendment.

The CLERK read the amendment which was to add at the end of the section:

"That a judicial district shall contain a population of not less than forty thousand inhabitants; and the Legislature shall hereafter make such further judicial districts as may from time to time become necessary."

Mr. ALRICKS. I accept the modification which is suggested to me, and will say thirty-five thousand.

The CHAIRMAN. The amendment will be so modified. The question is on the amendment as modified.

The amendment was rejected; there being on division, ayes fifteen; less than a majority of a quorum.

Mr. STRUTHERS. I offer the following amendment, to be added at the end of the section:

"And the Legislature shall provide for the division of any district composed of more than one county in which there is now an assistant law judge as soon as the commission of such associate law judge shall expire."

Mr. Chairman, it appears to me desirable, and I think that is the intention of the Convention, that there should be single districts as far as possible and with a single judge in each district outside of the large cities. The object of this amendment is that when in the district in which I reside, composed of Erie, Warren, and Elk, the term of the associate judges shall expire, the district shall be re-arranged. That will leave Erie county a single district, and another connection will ultimately be made for the other two counties. The object is simply that.

Mr. ARMSTRONG. The district in which Erie is, is the sixth district of the State, composed of the counties of Erie, with a population of sixty-five thousand nine

hundred and seventy-three, Warren, twenty-four thousand eight hundred and ninety-seven, and Elk, eight thousand four hundred and eighty-eight, making a total population in the district of ninety-eight thousand three hundred and fifty-eight, with two judges. Now, if the district were divided as the gentleman proposes, and Erie were constituted a district, there would be a population of sixty-five thousand nine hundred and seventy-three in that district, the most busy and active commercial part of the present district, and Warren and Elk, with a rural population of about thirty-three thousand would have comparatively little to do; certainly by no means sufficient to occupy any judge. It is one of those districts in which perhaps the Legislature judged wisely that it was well that these counties should be joined together with two judges, that they might thus better equalize the great business of Erie county with the comparatively small business of Warren and Elk. It is an additional illustration of the propriety of leaving this subject in the discretion of the Legislature without attempting to define the districts in this Convention.

Mr. STRUTHERS. I did not contemplate that Warren and Elk should be constituted into a district, nor is it necessary that they should be. I take it that some county will be put into a district with Warren and Elk.

The CHAIRMAN. The question is on the amendment of the gentleman from Warren (Mr. Struthers.)

The amendment was rejected.

Mr. HANNA. I move to amend the section by striking out in the second and third lines the words "the jurisdiction and powers of."

Mr. ARMSTRONG. Without sufficient reflection, when the subject was first broached by the gentleman from Fayette, I suggested that perhaps those words might properly be left out. I think it is better they should be retained. They were put in deliberately and with a purpose. The language is: "The jurisdiction and powers of the courts of common pleas." It defines them specifically. I do not know that it is a matter of any very great importance; but yet it adds somewhat of certainty to the intention of the section. I think it would be well to leave those words in.

Mr. KATNE. I ask the gentleman if under this language the Legislature could

not change the jurisdiction of the courts entirely?

Mr. BARTHOLOMEW. Could they not take away from the judges of the common pleas their oyer and terminer jurisdiction, for instance?

Mr. ARMSTRONG. I do not know that I get the idea of the gentleman.

Mr. BARTHOLOMEW. The Supreme Court have decided that the Legislature cannot take away from the court of common pleas its oyer and terminer jurisdiction under the old section of the Constitution. Now I ask the chairman whether, under this provision as it reads giving the Legislature power to control the jurisdiction of the court of common pleas, the Legislature could not deprive that court wholly of its oyer and terminer jurisdiction or of any other special jurisdiction?

Mr. ARMSTRONG. I believe it might.

Mr. BARTHOLOMEW. Certainly it could.

Mr. ARMSTRONG. I believe that is the purpose of it.

Mr. MACCONNELL. I think the objection is not a good one. The gentleman is mistaken in regard to the Supreme Court having decided that the Legislature could not take away the jurisdiction of the court of common pleas to try oyer and terminer cases. I hold that the court of common pleas has no such jurisdiction. It belongs to the judges of that court apart from the court itself. The court of common pleas is one thing; the court of oyer and terminer is another. Each of them has its own distinct and separate jurisdiction; but the same persons are constituted judges of both those courts. I think the judges and the courts are entirely separate and distinct.

Mr. BARTHOLOMEW. The gentleman did not exactly understand my proposition. My proposition is that the judges of the court of common pleas by virtue of their office as judges of that court are justices of oyer and terminer under the old Constitution, and the Supreme Court have decided that that power cannot be taken from them by the Legislature.

Mr. MACCONNELL. This power is not conferred on the judges of the court of common pleas, but upon the court itself. The section provides that the courts of common pleas shall have the jurisdiction and powers of courts of common pleas until otherwise provided by law; but it does not refer to the power and jurisdiction of the judges of the courts of common pleas. They have had a power and jurisdiction

outside of the court of common pleas. They have power and jurisdiction in the orphans' court; a court entirely separate and distinct from the common pleas; so of the quarter sessions; so of the oyer and terminer. It does not refer to the power and jurisdiction of those judges, but of those particular courts.

Mr. BARTHOLOMEW. I understand the gentleman's distinction, that this section does not refer to anything except common pleas courts; but I take it, it is by virtue of their commissions as judges of the court of common pleas that those judges are justices of oyer and terminer, and that other powers are vested in them such as the power of acting as judges of the orphans' court.

Mr. EWING. Will the gentleman allow himself to be interrupted?

Mr. BARTHOLOMEW. Certainly.

Mr. EWING. If he will examine the ninth section of the report of the committee, which is substantially the same as the fifth section of the old Constitution, he will find that precise matter provided for.

Mr. BARTHOLOMEW. That is true; but this section by its language seems to give the control to the Legislature over the jurisdiction and the powers that are vested in the court of common pleas. Now, what may be the construction of that? If the judges of that court are justices of oyer and terminer by virtue of their commission, and the Legislature can control that power which is vested in them, and if they should so construe it, then I take it the Legislature would have the right to take from them such jurisdiction or interfere with any other power vested in them by the Constitution.

Mr. DARLINGTON. I think we are probably splitting hairs here. I understand the object of this section to be merely to prescribe that the courts of common pleas shall remain as heretofore, except so far as they are changed. We have provided that the judicial power shall be vested in a Supreme Court and in certain other courts; that the Supreme Court shall consist of so many judges, &c. Now all we mean to say, it strikes me, and all we need say is that "until otherwise directed by law the courts of common pleas shall continue as at present established except as herein changed."

Mr. ARMSTRONG. The gentleman will allow me to interrupt him for one moment as it may possibly save time. After some consultation with members of the committee here, I believe I shall with-

draw entirely all objection to the amendment. I cannot see very clearly that it adds any very essential force to put in the words; perhaps it does not add any clearness to the section, and I will withdraw any objection to the amendment.

Mr. DARLINGTON. Very well.

The CHAIRMAN. The question is on the amendment of the delegate from Philadelphia (Mr. Hanna) to strike out the words "jurisdiction and powers of."

The amendment was agreed to.

Mr. EWING. I wish to call the attention of the chairman of the Judiciary Committee to one matter. The words "organized for said courts" were stricken out. I wish to ask whether that was properly considered. That language is in the old Constitution, and it seems to me those words can do no harm here and perhaps it is as well to have them in. If they were stricken out, would it not forbid the creation of separate districts or judicial districts for the Supreme Court? We have the Eastern, Western, and Middle districts now.

Mr. ARMSTRONG. The words were in the former Constitution and were originally reported here. It would be just as well to restore them.

Mr. EWING. I think they should be here.

The CHAIRMAN. Is a motion made to reconsider the vote by which those words were stricken out?

Mr. EWING. Yes, sir.

The motion to reconsider was agreed to.

The CHAIRMAN. The question recurs on the motion to strike out the words. Voting down this motion restores the words.

The motion was not agreed to.

The CHAIRMAN. The words are restored to the section.

Mr. BUCKALEW. I move to restore the language of the old Constitution, by striking out "four," and inserting "five" before "counties."

The CHAIRMAN. That has been practically voted on.

Mr. BUCKALEW. The amendment of the gentleman from Fayette included three distinct subjects together.

The CHAIRMAN. All of the three subjects have been separately considered and voted upon. However, it will be regarded as in order.

Mr. BUCKALEW. We have restored the language of the Constitution in other respects.

The CHAIRMAN. The delegate from Columbia moves to strike out "four" and insert "five."

The amendment was rejected.

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

Mr. D. W. PATTERSON. Before the vote is taken on the section as amended I should like to move to reconsider the vote striking out the first line and the second line to the word "until." That language was intended to continue and validate the commissions of judges now in commission; and while it may be fixed in the schedule, we had better have it plain and distinct. We do not wish to have the opposition of the president and associate judges against this Constitution; and I move to reconsider. I voted to strike out the sentence when the amendment of my friend from Fayette was up and we thought of changing the system.

Mr. ARMSTRONG. The words which the gentleman proposes to restore were inserted by the committee with a view to prevent the commissions of the present judges being disturbed; but upon reflection I think it unnecessary, for unless there be some repealing clause by which they are ousted from their commissions they remain of course and there is nothing in the report which proposes to disturb them. I suggest therefore that it would be unnecessary.

Mr. D. W. PATTERSON. I think we had better make it plain on its face and have no doubt about it.

The CHAIRMAN. The question is on the motion to reconsider.

The motion was not agreed to.

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

Mr. WALKER. Before the vote is taken I move as a substitute for the section the following:

"Hereafter each county containing not less than forty thousand, nor more than eighty thousand, shall be entitled to one law judge. Counties containing less than forty thousand shall be connected with an adjoining county so as to form judicial districts containing not less than forty thousand nor more than eighty thousand. Counties containing eighty thousand and upwards may by the Legislature be allowed two law judges."

Mr. NILES. I move to strike out "forty" and insert "thirty."

The CHAIRMAN. The question is on the amendment of the delegate from Tio-

ga to the amendment of the delegate from Erie.

The amendment to the amendment was rejected, ayes sixteen, not a majority of a quorum.

The CHAIRMAN. The question recurs on the amendment of the delegate from Erie (Mr. Walker.)

The amendment was rejected.

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

The section as amended was agreed to as follows:

"SECTION 4. Until otherwise directed by law, 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."

The CHAIRMAN. The next section will be read.

The CLERK read section five as follows:

SECTION 5. 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.

Mr. ARMSTRONG. It is proper that I should make an explanation to the committee of what seems to be the necessity for this change. The purpose which the Judiciary Committee kept steadily in view through the entire consideration of the question was to simplify the courts as much as possible and to bring them into harmony and unity, that the entire judicial system of the State might be one connected and symmetrical whole. In the city of Philadelphia, as in the city of Pittsburg, there are district courts. These

district courts, although they have the sanction of many years, are a totally distinct jurisdiction in very many regards from that of the court of common pleas. In the city of Philadelphia the criminal jurisdiction is not vested in any degree in the district courts and I believe it is not in the county of Allegheny. The criminal jurisdiction is one of exceeding great importance not only to the particular persons who may be charged with crime, but its just administration is of the utmost moment to the peace of society, and it was thought that it would be advantageous in both these cities that the jurisdiction of all their judges should be co-ordinate and that they should each take their turn in the administration of criminal law; not only that it would be advantageous to the people at large and give additional force to judicial decisions in that department, but because the judges themselves would be brought into closer relations with the people and with the administration of the law in all its branches. It would, therefore, operate advantageously both upon the judges and upon the people.

Then there is no necessity for continuing the district courts in either of those places. I do not mean to say by that that there are not many lawyers who would prefer to retain them; I do not mean to say that the judges themselves would not prefer to be let alone; but looking at the entire scope of the judicial administration in the State, it was thought to be advantageous that we should have no difference in the mode of administering law or in the extent of the jurisdiction either in the city or in the country, but that they should all be brought into close harmony and unity.

Again in Philadelphia and also in Allegheny there is a necessity for increasing their judges. The court of common pleas in Philadelphia and the district court have each five judges. To increase their judicial force by adding even one judge to a court would make a bench of six judges, which is not a good number for a court, being too large and unwieldy. The mode proposed is capable of very easy expansion, it is capable of indefinite expansion, and can keep pace with the increased business of the courts without in the least disturbing the harmony of the system.

I do not propose to dwell upon it at length because it appertains so entirely to the administration of the law within the

city that I have no doubt we shall listen with advantage to those who may speak from experience on this subject.

The district court judges of this city, as I am authorized to state, are content with the amendment as proposed. However if it were submitted to them as a question purely and alone whether they would retain their district court, I have no doubt they would prefer to do so, but they make no objection to the change which is proposed in the report of the Committee on the Judiciary, and I have had the satisfaction of having several of those judges express distinctly and personally to myself their satisfaction with the report of the Judiciary Committee in that regard.

With these views, desiring to say only sufficient to bring the section to the attention of the committee of the whole at this time, I will not detain them by further remarks.

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

"And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in said courts of common pleas.

Mr. Chairman, without committing myself fully to support the report of the Committee on the Judiciary, although my inclination is to favor it, it strikes me that if we are to have a uniform system, that is if we are to abolish district courts, or courts of limited, restricted common pleas jurisdiction, we must have something in this Constitution to limit and restrict the power of the Legislature; for the reason that if we create a uniform system by the Constitution, having all the courts of civil jurisdiction courts of common pleas and common pleas alone, we ought to finish our work and make it a complete whole, and provide that after we have submitted the Constitution to the people, if it be adopted by the people, the Legislature shall not have the general power vested in them to create such other courts as they may from time to time think proper and necessary. Unless that legislative power be also limited, the very next winter after the adoption of this Constitution the Legislature of Pennsylvania will in all human probability create these very district courts. Certainly they will be urged and solicited to do so. Therefore, if we mean to establish by our action here a uniform system abolishing the district courts as now created throughout the State thus rendering our

system a unit, and a uniform and complete one, we must put restrictions upon the power of the Legislature to prohibit them from doing that which they have done in the past and destroying the labor we have done here to-day. It seems to me to be idle that we should go to work to create a uniform system here to-day, leaving the power in the Legislature next winter to undo all that we have done in this Constitutional Convention. That seems to me to be idle, merely child's play and therefore I offer this amendment.

Mr. CAMPBELL. I hope the gentleman from Schuylkill will except orphans' courts and probate courts.

Mr. BARTHOLOMEW. I do not know whether this will cover it.

Mr. CAMPBELL. If it does, I hope the gentleman will not include them.

Mr. BARTHOLOMEW. I will make that exception.

Mr. ARMSTRONG. That will make it consistent with the report of the Committee of the Judiciary.

The CHAIRMAN. How does the gentleman from Schuylkill desire to modify his amendment.

Mr. BARTHOLOMEW. By adding "except orphans' courts and probate courts."

Mr. ARMSTRONG. I suggest that probate courts be not included, because probate courts are provided for elsewhere.

Mr. BARTHOLOMEW. Well, then, only orphans' courts.

Mr. BAKER. I ask that the amendment as modified be read.

The Clerk read as follows:

"And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in said courts of common pleas, except orphans' courts."

Mr. ELLIS. Mr. Chairman: I am entirely in harmony with my colleague (Mr. Bartholomew) in his proposition. I agree that it would be useless for us to establish a system of courts in the State and then leave in the Constitution the power to the Legislature to revolutionize the entire system at their next session. I think, however, that we ought to insert this limitation in the first section which we adopted. After thorough discussion and the exercise of all the artillery, *pro* and *con*, of this committee of the whole, on the question of the circuit court, we passed the remaining portion of the old constitutional article without making any limitation. The report of the majority of the Commit-

tee on the Judiciary contained a very wise and I think, a very proper provision on this question, and my idea would be to restore the first article of the report as it came from the majority of the Committee on the Judiciary. I will read as part of my remarks the section as I would amend it.

After the words "and in such other courts" I would add:

"With civil jurisdiction not exceeding \$300 and with such criminal jurisdiction and powers"—that is giving the Legislature power in these cases to establish courts of this kind—"such criminal jurisdiction and powers, not above the grade of misdemeanor, as shall be conferred by law. No court of record other than those herein designated shall be established."

That would restore to that section the cautionary provision which was in the original report of the Committee of the Judiciary, and I think it is of the utmost importance for this Convention to insert into this Constitution just such a safeguard. We have had some instances, to which I have no desire to refer with a view of recalling any unpleasantness, but simply by way of warning. We are here assembled in the discharge of a high and important duty, and we should turn back to these lessons of the past and heed them as admonitions for the future. I will explain what I mean by reference to my own district. We have there a most anomalous and most extraordinary court, created under the old Constitution, being a court entitled "A Court of First Criminal Jurisdiction." It is a court created by putting two other counties on to Schuylkill county and establishing a court entirely independent, distinct, and separate from the common pleas of that county. The question of its establishment was brought before the Supreme Court and, under another section of the Constitution of the State which provided that judges of the common pleas shall be judges of oyer and terminer and describing their powers, the Supreme Court said that the Legislature had no right to take away from the judges of the court of common pleas their constitutional jurisdiction as judges of oyer and terminer. But to meet that objection, the Legislature during the next winter passed a supplement to the bill establishing the court of First Criminal Jurisdiction, saying that that court should have jurisdiction in all crimes in that county, and that the judges of the court of common pleas might exer-

cise their constitutional powers as justices of oyer and terminer during one week in the year. This was not going squarely in the teeth of the old Constitution; but if the Legislature had the right to limit the jurisdiction of the judges of the common pleas, or at least to limit the exercise of that jurisdiction, to one week, they had the right to limit it to one day or to one hour or to one minute and virtually to to take away the jurisdiction altogether.

There can be no objection to saying that the courts which we are to establish shall be the constitutional courts of the State and that other than these there shall be no courts of record or courts not created by the Constitution established by the Legislature. If it be necessary in the future to change this, I suppose there will be a proper manner of doing so. There is contained in the present Constitution, and I have no doubt there will be retained in that which we are framing, a mode of amending the Constitution by specific provision submitted to the people and that will furnish ample means for constituting new courts of record if they become necessary. But I think it the part of wisdom to confine that power to the people, to be exercised by means of a constitutional amendment. In times of high political excitement it is possible that such an experiment as was tried in a small way in Schuylkill county might be repeated in every district in the State and the party in political power might revolutionize the entire judicial jurisdiction of the courts of the State of Pennsylvania inside of twenty-four hours. Such a thing is shocking to contemplate. In the matter of the common pleas alone, there have been instances, within my own immediate knowledge, in which this power has been used by the Legislature to such an extent as to make this supposition no vain imagining. In the district, in which the eminent chairman of the Committee on the Judiciary, I believe, resides, the court of common pleas, as if by a magic wand, was wiped out of existence in one night by the claimed power of the Legislature.

This is a warning which it is our duty now to heed. It shows us that while we are framing a constitutional code to govern the judiciary of the State of Pennsylvania, we should so frame it that when it has been submitted to the people of the State for their adoption, and they have adopted it, it shall be the established judicial system of the Commonwealth until,

by equally solemn vote, the people determine to alter it. We have seen that it would be unsafe to trust too much to the Legislature, not because the Legislature is in anything inferior to us. They are simply human like we are, and if we were in any measure a political body, with the promptings which come up from the people exciting us, we might if we had the same powers, under the like circumstances, under the same clamor from the people and with the same human failings, do the same thing; and for this reason, there should be the same check placed upon the Legislature that we would place upon ourselves, that we might not in a time of hasty action and of passion do that which we should afterward regret.

I will therefore vote for the amendment of my colleague from Schuylkill in this place, with a prospect of having the first section reconsidered and having one general provision added by which these courts of civil and criminal jurisdiction which we are about to establish will be protected from any subsequent act of the Legislature.

Mr. CAMPBELL. Mr. Chairman: I think that the amendment of the gentleman from Schuylkill (Mr. Bartholomew) is a very good one, because if we do away with the district courts now existing as I hope we shall, the amendment offered will prevent the possibility of the Legislature again imposing them upon us. The amendment will also make the section before us more complete. While I do not altogether like the plan of the section, my own preference being to have the number of common pleas judges based upon population, and to have one general court sub-divided into chambers, yet I shall, if there is nothing better proposed, vote for the section, with the amendment suggested by the gentleman from Schuylkill. I think it will tend to establish a uniformity in our judicial system by riding us of the present district courts that now lead to confusion in our practice.

We now have in effect various courts under different names and judges having concurrent jurisdiction over cases of a similar nature. The lawyers of the counties in which these courts exist are compelled very often to practice under different rules and regulations in one court, from those in another. This variance in practice ought not to be. By getting rid of the district courts we shall get back to a simple and uniform practice. In the

city of Philadelphia we have a district court, that with all due deference to the judges that preside over it, I do not think is a favorite with the people, because of the delay that occurs in bringing cases to a conclusion. A case, when it is started in one of our district courts, is very often not brought to trial for a year, or a year and a half, after it is commenced; and consequently there is great complaint among our citizens, that the district court of this city is really not what it ought to be, a court of justice; that the delays that occur in that court practically deny justice to those who are unfortunate enough to become suitors. I do not mean to say that the judges of the court are responsible for such a state of things, because they all try to do their whole duty, but they find it a physical impossibility to get through all the business that is brought before them. By increasing the number of courts, and placing them at the the same time under one general system of common pleas courts, we can get through the immense amount of legal business in Philadelphia and we can establish a uniformity about our legal practice that will be agreeable to both the practitioners and the people.

I think that instead of having twelve judges of the common pleas, we should have fifteen, because I do not think that that latter number is too great for the wants of this great metropolis. I also desire to see the amendment of the gentleman from Schuylkill adopted, because I am in hopes that there will be a separate orphans' court established in the city of Philadelphia, and that the present jurisdiction vested in the register of wills, of admitting wills to probate and granting letters of administration, will be taken away from that officer, who at present is a very irresponsible person and will be vested in our orphans court or a probate court. As the matters as will come before the orphans court are entirely different from those that properly come within the jurisdiction of the common pleas and district courts, the uniformity in civil practice will not be taken away by the establishment of such orphans' courts separate and distinct from the common pleas courts. I hope therefore that the amendment of the gentleman will pass that then the section as amended will be and passed in its present shape or that something substantially the same will be adopted in its stead.

Mr. HANNA. Mr. Chairman: I have since the report of the Committee on the Judiciary was presented to the Conven-

tion, carefully considered this novel scheme presented and originated by that committee. It proposes to do away with that which I submit, contrary to what has been said by my colleague to the right (Mr. Campbell,) is to-day the most popular branch of any of the courts in the county of Philadelphia. My friend would lead this committee to believe, on the contrary, that it was unpopular; that the people complained; that the bar complained. Sir, I say at this time of all the courts it is the most popular in the county Philadelphia. More suits are brought there than in any other court and are disposed of to the satisfaction of the bar and the people generally. We have heard no complaint. No memorials have been here presented asking the Convention to do away with that court; but, on the contrary—

Mr. CAMPBELL. May I ask the gentleman a question?

Mr. HANNA. Certainly.

Mr. CAMPBELL. Was not the creation of the two last judgeships due to the complaints of the people of the insufficiency of the court and the delay in the trial of causes in that court?

Mr. HANNA. My friend has not told the committee all the facts of the case. He has stated to the committee that those causes of complaint now exist, but not that prior causes of complaint had been answered by the Legislature by authorizing additional judges.

I was at first inclined to suppose this proposed plan would be an improvement, but upon reflection and consideration and consultation with members of the bar, I am satisfied that the bar of Philadelphia, who are really more at home with and more interested in such a subject as this than the people themselves, being more familiar with what is required in the practice of jurisprudence, are content with the present organization.

By the Constitution of 1837-8 courts of common pleas were established, but it soon became evident that the business of the city of Philadelphia had grown to such an extent that district courts were required and the Legislature over sixty years ago established and organized this district court. It was first organized with three judges and up to within three years ago was so constituted. Then the city having grown, the business having accumulated, an additional judge was provided for. Then a year ago still another judge was added, so that to-day we



have five judges upon the bench of the district court, and such arrangements have been made that three courts of *nisi prius*, three courts for jury trials, will hereafter be in full operation.

Mr. BOYD. I rise to a point of order.

The CHAIRMAN. The delegate from Montgomery will state the point of order.

Mr. BOYD. I understand the gentleman to be discussing the question as to whether there should be a district court in the city and county of Philadelphia or not. Now I submit, that that question was decided by this committee when they voted upon the first section declaring that "the judicial power of this State shall be vested in a Supreme Court, in courts of common pleas," and so on, and no others. That vote is decisive on the question of this report, a motion having been made to introduce the words "district court" in the first section and voted down, and the question was then canvassed and voted upon, and now it is being discussed over again.

The CHAIRMAN. The point of order is not well taken. The delegate from Philadelphia is discussing the amendment offered by the delegate from Schuylkill, which brings up the question directly.

Mr. HANNA. My friend from Montgomery cannot have read the entire section. If he had he would have seen that the point of order was not well taken. This section does bring up the whole question. Notwithstanding the amendment offered by the gentleman from Schuylkill, I submit that the merits of the entire section as reported by the Committee on the Judiciary are now before the committee of the whole.

I do trust that we shall not adopt any such proposition. I trust also that we shall not adopt the amendment offered by the gentleman from Schuylkill providing that hereafter the Legislature shall not establish or authorize any court of record other than those mentioned in the Constitution. I think that would be taking a dangerous step, thus to tie the hands of the people. It is not the Legislature only that is being trammelled but it is providing no redress whatever for the demands of the future. Why, sir, the older members of the bar on this floor will remember when it became necessary to create additional courts to meet the requirements of the people since the Constitution—

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

Mr. HANNA. Certainly.

Mr. ELLIS. Could not the courts of common pleas of Philadelphia and of Allegheny to-day have been increased in numbers so as to have made it unnecessary to have district courts?

Mr. HANNA. I will answer the gentleman by reminding him of the fact that the jurisdiction of the court of common pleas is almost unlimited, having law, equity, orphans' court, registers' court, and criminal court, and it became necessary to establish a court where the trial of civil causes alone should be held in order to meet the necessities of the community.

Mr. CAMPBELL. May I ask the gentleman another question?

Mr. HANNA. Certainly.

Mr. CAMPBELL. Does not the gentleman know that the judges of the district court, or somebody for them, at the recent session of the Legislature had an act passed vesting in them equity jurisdiction also, and that the bar did not know it until they saw the act in print?

Mr. HANNA. The gentleman asks me a question that I am not prepared to answer, namely, that the judges of the district court did it.

Mr. CAMPBELL. Or somebody representing them?

Mr. HANNA. I am willing to admit that such an act was passed, but not as my friend insinuates that the judges of the court had anything to do with it. I know nothing of the kind; but it is not the first time that local and special legislation has been passed without the knowledge either of the bar or the community; and that is what we propose to provide against, I hope, in this Constitution.

But, sir, I do maintain that the proposition of the minority of the Committee on the Judiciary who reported through Mr. Dallas and Mr. Cuyler should be adopted by this committee. Their report is found on page four hundred and thirty-one of the Journal of the Convention. These gentlemen (who I believe, as well if not better, far better than myself or colleagues, understand the sentiment of the bar of Philadelphia) propose in their minority report a continuance of the present organization of the district court and court of common pleas for the city and county of Philadelphia.

I am aware that much can be said in favor of the proposed change. I have thought that many arguments could be made in favor of it; that uniformity would be produced; that a change

practice would be given the judges of the courts; that the judges now five in number upon the bench of the district court would have an opportunity of relieving the judges of the common pleas in the oyer and terminer and quarter sessions; and then *vice versa*: That the judges of the common pleas who now alone have the criminal jurisdiction would have the opportunity of trying the causes arising at present in the district court. I can see all that, and can perceive that it might be an advantage in these respects; but on the other hand I submit whether it is not better for the suitors, whether it is not more satisfactory to the bar, that we would have judges presiding upon the bench familiar by years of experience, years of trial, with the causes brought before it. Is it not better that we should have a judge well acquainted with the law relating to crimes and misdemeanors before whom to try our criminal cases than a judge who has for years been accustomed to sit at *nisi prius* only in civil cases.

For these reasons, I must say that I am not prepared to vote for the report of the Committee on the Judiciary. I am fearful of making such a change as is here proposed. I am sure it will not be satisfactory; and I also feel entirely satisfied that the people and the bar of Philadelphia are content with the present organization. The Constitution of 1837-38 on this very subject I submit is a model of simplicity. Eleven sections on the judiciary cover the whole subject, and yet here this committee report to us three times the number. Is it any wonder that gentlemen say to us on every hand, "Why, we cannot take the time to read your report." A well known member of the bar of this city said to me the other day that when the report of the Committee on the Judiciary was presented to this Convention and printed in the public papers he was appalled and could hardly venture to read it through. I submit are we not descending to such details as will make our work ridiculous and bear it down to utter defeat before the people of the State, taking away from the people, not the Legislature, but the people of our cities, of our counties, of our communities, the right of having their wants redressed through their proper representatives in the Legislature?

I am willing to adopt all proper safeguards, but I say the people of our cities, and counties, know their own wants best

and should have the means and the opportunity of obtaining such redress and such facilities to enable them to receive justice through their courts as are to them best known and best suited.

I am satisfied, therefore, Mr. Chairman, that we are going entirely too far, and I hope that the people of Philadelphia as well as the people of Allegheny county will be left alone and let them express through their representatives in the Legislature how they want their courts of justice to be constituted. I therefore hope that this section will not be adopted.

Mr. SIMPSON obtained the floor.

The CHAIRMAN. The Chair will remind the gentleman before he proceeds, that the immediate question before the committee is not the section but the amendment offered by the delegate from Schuylkill, (Mr. Bartholomew,) so that we will not consume too much time.

Mr. SIMPSON. Mr. Chairman: I am not in the habit of discussing questions not before the Convention, as the body is very well aware; but I take it, if the amendment of the gentleman from Schuylkill be adopted it will be an indication that the section to which it is proposed as an amendment will be adopted as amended. I think therefore I have a right to discuss the question in that view. I am opposed to his amendment, and shall be opposed to the section whether it be amended or not. I do not wish to trespass on the time of the committee or wander away from the subject; but I desire to call the attention of the committee to the facts of the case as they are thus far elicited.

The two courts in Philadelphia, the district court and the court of common pleas, are not alike in their jurisdiction and powers, while in Allegheny county I am informed they are; that each court possesses precisely the same jurisdiction and power that the other possesses, but that is not the case in Philadelphia nor has it ever been the case. In 1810 the Legislature of Pennsylvania saw proper to establish a district court in the city of Philadelphia for the purpose of securing some reasonable degree of speed in the trial of causes at common law. It had no equity powers; it had no equity jurisdiction. It was confined, I might almost say, to a *nisi prius* court for trials by jury. It has been continued as a statutory court from that day down to the present.

Mr. J. W. F. WHITE. Will the gentleman permit me to interrupt him?

Mr. SIMPSON. Yes, sir.

Mr. J. W. F. WHITE. I rise at the request of one of the Philadelphia members to explain the difference between our district court and court of common pleas. Our district court and court of common pleas have concurrent jurisdiction in all cases of equity and common law. The judges of the common pleas hold the orphans' court and the criminal court; but in all other respects the district court and the common pleas have concurrent jurisdiction.

Mr. SIMPSON. That is not the case with the district court of Philadelphia.

Mr. BIDDLE. It is the same. I should like to say to the delegate from Philadelphia (Mr. Simpson) that the district court now has concurrent jurisdiction in equity. I can see no difference between the concurrent jurisdiction in Allegheny county and in Philadelphia, after hearing the statement of the gentleman from Allegheny (Mr. J. W. F. White.)

Mr. MACCONNELL. If the gentleman will allow me, the district court of Allegheny county has no jurisdiction in cases under one hundred dollars and the court of common pleas has; and as a consequence, the district court has no jurisdiction of appeals from judgments of justices of the peace or in cases under one hundred dollars, or in attachments. That is the difference between their jurisdictions.

Mr. SIMPSON. I will say that the district court of Philadelphia is purely a statutory court, has never been recognized in the Constitution, but has been permitted to exist from 1810 down to the present time. A few years ago it was thought best to confer upon it equity jurisdiction to a certain extent, and it was conferred; and in the act conferring upon the district court that power, an amendment was placed giving to the common pleas concurrent jurisdiction in suits amounting to five hundred dollars. Up to that time the common pleas had been restrained in jurisdiction to cases not exceeding one hundred dollars, while the district court was limited to cases involving more than one hundred dollars. As I have said, it was purely a statutory, confined to common law cases. The common pleas had the control of orphans' court business, of the register's court, and of the criminal court, and they had vast power in certain other classes of cases that have never been vested in the district court.

Now, this plan proposes to abolish the whole of that system. If the amend-

ment of the gentleman from Schuylkill, (Mr. Bartholomew,) be adopted, it will apply not only to Philadelphia, but to the entire State, and the bar and business community cannot be relieved from an over-pressure of business. I need only state to this committee the number of cases brought in the two courts in our city, and they will see at once the favor with which one is received and the disfavor with which the other is received in the trial of common law cases. The number of suits brought in the district court run from eleven thousand to thirteen thousand per year, of original cases, while in the common pleas, on its common law side, including its appeals from the justices of the peace, all suits for ground rents, mechanics' liens, and other cases up to the sum of five hundred dollars, they scarcely amount to three thousand per annum.

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

Mr. SIMPSON. Yes, sir.

Mr. EWING. Is not that largely because the common pleas judges have their time taken up by the criminal courts and by the orphans' court and miscellaneous business that comes into the court of common pleas?

Mr. SIMPSON. It is partially so, but not entirely. The two courts have different sets of rules, and under the rules of one there is some reasonable degree of probability of having your cases tried and determined within a reasonable time, while, in the other, when they get started on the list you do not know when you will see the end of them; you may see it in an ordinary lifetime, and you may not. Certain it is that so far as jury trials are concerned for the trial of causes where mere momentary considerations are involved, it is very inconvenient in the one court, while it is very convenient and precise in the other. The common pleas, owing to the amount of business now imposed upon them, can only give to the trial of monetary cases twelve weeks in the year, with one judge. The district court gives us three courts, sometimes four, and they sit for nine months in the year for the trial of cases,

Now, the proposition is to abolish the district court, to confer the same powers and authority upon four courts, and make them all equity courts with co-ordinate jurisdiction. I confess, Mr. Chairman, that I am impressed with the belief that it will only result in making "confu-

sion worse confounded." While I understand the desire of the committee in reporting this section, to secure uniformity, I must say that I do not think that uniformity will be beneficial to the people of Philadelphia or to the suitors. I would be willing, so far as I am concerned, to secure uniformity if it can be done consistently with a desire to do equal and exact justice. We wish to establish forums for the people in which their cases may be tried with some reasonable degree of certainty. I feel confident, however, that if this scheme be carried through the committee and adopted by the Convention, and ratified by the people subsequently, it will be a denial of justice to very many suitors in this city.

And yet, Mr. Chairman, this plan is not to be uniform everywhere. It is proposed that in certain counties of this State there shall be an orphans' court separate from the common pleas, and I concur in the idea because I believe it will secure a better administration of justice in the settlement of the estates of decedents, and I think it ought to be so. Wherever the population is sufficient to raise up an amount of business that will occupy the attention of one or more judges in that particular branch, it would be better that such a court should be established; and yet that is in violation of the principle of uniformity, because all the counties will not have a separate orphans' court. In counties with a lesser population than is named by the report of the committee, those orphans' courts will have a jurisdiction along with the common pleas and mixed up with the criminal court.

Nor am I alone in my view of this case. I consulted with our honored President, the oldest practitioner at the Philadelphia bar on this floor, and his judgment concurs with mine, that this proposed system is not only not beneficial, but will be prejudicial to the interests of the community in which I reside.

I trust, therefore, that the amendment of the gentleman from Schuylkill will not be adopted, and that the section now under consideration will not be adopted, so far as Philadelphia is concerned. If necessary, we can have two district courts, or three district courts, or four district courts; but I would leave the matter as it is at present. I would not take away from the Legislature the power to establish an additional district court, if necessary, with limited jurisdiction, such as the district court of the city has now. I would

authorize the establishment of additional courts of common pleas likewise, if necessary, so that the business may be transacted and the community satisfied. I repeat, the number of suits brought in the two courts is the best evidence of the favor in which they are now held by the community in which I live.

The CHAIRMAN. The question is on the amendment of the delegate from Schuylkill (Mr. Bartholomew.)

The amendment was agreed to; there being on a division, ayes thirty-four, noes eighteen.

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

Mr. BIDDLE. Mr. Chairman: I rise to say a few words in regard to this section lest the Convention might suppose that the feeling of the bar of Philadelphia was in opposition to this section as reported. I do not so understand it at all; and I should like to know precisely, if I could, because it would have very great weight with me, what the particular objection entertained by the distinguished President of the Convention is to this section. He has been referred to, in such a way as to imply generally that he is opposed to the whole scope of the section. If it be merely understood that he is opposed to taking away from the judges who now compose the district court their functions and their office, I go heartily with him; and I doubt if he has ever said more than that. I do not know; I speak by no authority at all; but I doubt that. I should doubt whether he is opposed to the principle of this section.

What is that principle? It is telling the people of Philadelphia county and the people of Allegheny county, that instead of having their courts of judicature cut up into little bits, they shall have the same uniformity as the courts in other parts of the State; that there shall not be, as there once was in Philadelphia, by no means to its advantage, a court known exclusively as the central criminal court and a court known exclusively as a court to try civil issues; but that the jurisdiction of all the courts shall be as broad as the necessities of the suitors. In other words, this section gives symmetry, uniformity, and permanence to our judicial system. It makes what have been called the district courts what they have never heretofore been, constitutional courts that cannot be uprooted at the pleasure of the Legislature. It gives them what they ought to have—criminal jurisdiction. It confers

upon them what they have recently obtained, and what they once had before, though it was taken from them—an equity jurisdiction. It makes them, in other words, a part and parcel of the general judicial system of the State. So far from dwarfing them or detracting from their strength and jurisdiction, it amplifies and enlarges both very much.

Now, there are several advantages in this respect, notably in the administration of criminal justice.

It is a vast advantage to those connected with the administration of criminal justice; it is a vast advantage to the criminal himself that that kind of justice should be administered by men who do not habitually frequent the criminal courts. By this system of four co-ordinate courts of three judges each, you will have but one judge, except in capital cases, homicide cases, required to sit in the criminal court. That will be one term of one month in the year for each judge. The judge would therefore go in free from anything like influence; he would sit there a short time and he would come out knowing no more of the administration of criminal justice than a judge ought to know, and that is a vast advantage. It is a great disadvantage to the administration of criminal justice, and brings it into disrepute always, when the judge is anything but the mere judicial arbiter in the trial of the cause.

There are some things he ought not to know; there are some things he should never know. He should go there simply to dispense justice; and as we have had references made more than once to the jurisprudence of England, let me remind gentlemen that the highest judge in the land there, the Lord Chief Justice of all England, considers it no derogation from his dignity to sit upon the trial of a man for larceny. Quite the contrary. It elevates and ennobles him. When a man's life or liberty is concerned he has a right to have his case decided by the highest judge in the land, and not to be told there is quarter sessions law for him, and some other kind of law for other people. Besides it invigorates the mind of the judge to be brought thus in contact with his fellows in every class of judicial experience. Now, that is all this section says.

Mr. Chairman, it is quite true that this system of districting our courts has existed since 1810; but it is a spurious system; it was a temporary expedient resorted to in order to free the courts of common

pleas of what was supposed to be an undue pressure, and it is a superfection upon our judicial system, without a single redeeming feature of value to justify it. A judge is the better for having his jurisdiction extended. Why should a judge of the common pleas in Montgomery county or Delaware county be compelled at one time to hear a bill in equity, at another to decide a case in the register's court, at another time to try a capital case, and at another time to try a civil issue? Because the exigencies of his situation demand it; and it is better that justice should be so administered because the officer becomes more perfect from having his experience made wider. Why should we be deprived of this valuable privilege in Philadelphia? No man respects more highly than I do the judges of the district court. They are learned, laborious, and anxious to do their duty; but I can see no derogation from the judicial character of those judges by asking them to do what their fellows do in another court; nor are they desirous of avoiding this duty. I speak authoritatively, I wish so to be understood, when I say that while some of the judges of that court may have preferred to allow things to remain precisely as they were when this Convention first met, yet they do not now object to the plan which is suggested by the section now under consideration. They have no objection to make to it. I know not for what purpose or whence came the memorial that has been referred to. Undoubtedly it has names of great respectability attached to it—gentlemen very high in the practice of the law in this county—but it by no means represents a majority or I should say a very general opinion of the bar of Philadelphia; at least in my opinion it does not. For a long time it has been a cherished desire of the bar of Philadelphia that so far as criminal justice is concerned it should be administered by all the judges for the reasons that I have very briefly alluded to.

There never was a greater delusion, if I may be allowed to use that phrase, than to suppose that by limiting a judge to a particular class of cases, you improve his efficiency in his labors. You do no such a thing. So far from the general growth of the man being developed by this restriction, he becomes one-sided and narrowed. He is a much better man if he has all his intellectual muscles exercised; he is a better judge if he has to turn oc-

casionaly from an examination into the principles of the civil law—I do not mean technically the civil law, but the civil law as opposed to criminal law—to the principles which are involved in criminal jurisprudence. They act and react very much upon each other; and gentlemen on this floor are very familiar with cases in which most interesting points affecting the decision of civil causes arise every day in criminal causes. So with regard to equity jurisdiction. The whole world where our system exists is rapidly coming now to the view that there should not be a separate court of equity and a separate court of common law. We know now that that is the last change contemplated in England. We have never had those separations here, and I am very glad of it. I believe that while we may have lost a little, very little in the mere technical parts of the administration of chancery law, we have gained immensely in other ways.

Now, this section merely does that. In point of fact it is already done, as we were told a little while ago an act of Assembly has been passed for the purpose; but that act of Assembly is quite a singular thing—is a very fluctuating act. I recollect when the judges of the district court had these equity powers. About six years ago the community in Philadelphia awoke one morning to find that the district court had ceased to have jurisdiction; and we awoke the other day equally startled to find that they had resumed it. I do not want that thing to be possible so far as the courts of our county are concerned for the future. By putting the impress of constitutionality upon these courts, you prevent such tampering with them and with their jurisdiction for the future. You do in effect what I hope to see in another shape adopted in precise terms, what was offered by the amendment of the gentleman from Schuylkill.

Mr. Chairman, the more you look at this section—I do not speak of the mere details of the particular section and the sections which immediately follow and which are to be read as part of it—the more you will feel satisfied that it is right in principle. It is really making one court of common pleas, preserving—and I wish that to be impressed on the mind of every one who listens to me—preserving entirely the existence and the functions of the judges now sitting in the district court. Not one of them is struck at; not a moment is abridged from the

term of any one of them; nor is their dignity attacked, because if gentlemen will turn to the schedule, which does not of course form a necessary part of the article itself, they will find that the judges of both courts are dealt fairly with. The learned president judge who now presides over the district court is given a court to preside over just as the learned judge who presides over the common pleas is also given, of equal importance. There is nothing like a desire to interfere with their just rank and precedence. All of that is carefully and faithfully preserved. What you are offered here is a system which shall be in harmony with the system that prevails in the rest of the Commonwealth, and I am at a loss to see a good reason why it should not be so. I can see gain, I can see advantage, I can see that we bring ourselves into uniformity, as we ought to, with the rest of the State, and I am at a loss to see that we sacrifice one single point in so doing. I trust therefore the section will be adopted.

Mr. MACCONNELL. Mr. Chairman: So far as the general scope of this section is concerned, I am in favor of it; so far as it involves the abolition of our district court I am in favor of that; but I think a majority of the Pittsburg bar would be opposed to it. Therein I think I differ from the majority of that bar. I am going to say very little in regard to the general subject involved in this report. I confine myself more to it as it affects Allegheny county.

It will be observed that the section provides for the creation of additional courts, of the like number of judges and the like jurisdiction, &c. That is to say, in the county of Allegheny, for instance, we may have at one time an increase of three judges, that being the only increase that is allowed under the section. We can only get an increase by threes. Now I object to that feature of the section and I propose to offer an amendment so far as the county of Allegheny is concerned, in relation to that matter. I think it will not be more than two or three years at the farthest until we shall need an increase of one judge, an increase of that much judicial force. A few years more will give us a necessity, I think, for an increase of two; but it will be quite a number of years before we shall require an increase of three; and to obviate that difficulty I propose to offer an amendment which I will read:

"The number of judges in any of said courts in the county of Allegheny may be increased from time to time: *Provided*, That whenever such increase shall amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid."

The CHAIRMAN. Does the gentleman from Allegheny design that this amendment shall come in at the end of the section?

Mr. MACCONNELL. I desire it to come in at the end of the section.

I do not think that it is necessary for me to give any further explanation of this amendment. It seems to me that I have already sufficiently explained it.

Mr. ARMSTRONG. I do not think there is any objection to the amendment, except that it should be applied to both Philadelphia and Pittsburg, in order to preserve the unity of the judicial system.

Mr. MACCONNELL. I will state to the chairman of the Committee on the Judiciary, that as I first wrote the amendment I made it applicable both to Philadelphia and Allegheny, but upon reflection and consultation with several gentlemen of the Convention, I determined to strike out the clause referring to this city. If the Clerk will read the amendment as it was originally written, the gentleman from Lycoming will see what I mean.

The Clerk read as follows:

"The number of judges, in any of said courts, may be increased from time to time: *Provided*, That whenever such increase shall, either in the said city, or said county, amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid."

Mr. ARMSTRONG. I think the amendment would be proper as originally written. In its present shape, as applied only to the county of Allegheny, it disturbs the harmony of the general system. If it is applied to both counties, I do not think there can be any objection to it.

Mr. MACCONNELL. I will restore it to its original shape if that will obviate any objection on the part of the chairman of the Committee on the Judiciary.

The CHAIRMAN. The gentleman from Allegheny modifies his amendment to the extent indicated, and the amendment as modified will be read.

The CLERK read as follows:

"The number of judges in any of said courts may be increased from time to time:

*Provided*, That whenever such increase shall either in the said city or said county, amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid."

Mr. TURRELL. Mr. Chairman: I have no objection to the idea incorporated in the amendment of the gentleman from Allegheny, but it seems to me that the section under consideration already covers the ground. I may be mistaken, but it occurs to me that the ground is already covered by the section itself. The section says:

"But the number of said courts may by law be increased from time to time, and shall be in like manner designated by successive numbers."

Does not that cover it? Does not that provision leave the matter open, so that as business requires it, these courts may be increased from time to time? And it seems to me that that is the way it should be done. The gentleman from Allegheny may understand the subject better than I do, but I like this principle and I desire to suggest to the chairman of the Committee on the Judiciary that in process of time there may be other counties besides these two cities which, under the increase of business, may desire this principle applied to them. There are other large counties where there will be more than one court required to do the business, and before this section is adopted, I want the chairman of the Committee on the Judiciary, or some other gentleman of the Convention to insert into it a clause which will allow this same principle to be applied to any other county, where more than one court of common pleas may be required, as the necessity for it may occur. It seems to me that if this be done, the section will be as perfect as we can make it and will be applicable to the entire State. Take the county of Luzerne, the county of Lancaster, or the county of Schuylkill, and there are other large counties where in the course of the next five or ten years the necessities of business may require another court of common pleas. I want this section flexible enough to reach such a case, so that this principle may be applied to them if their business may require it.

Mr. ARMSTRONG. I am in entire accord with what has been said by the gentleman from Susquehanna (Mr. Turrell.) The purpose of the Committee on the Judiciary was to extend this principle so

that it could be useful anywhere. There are now no courts in any district in the State which comprise more than three judges, except in the two cities which are there named; but if it would be advisable to extend this principle further, on behalf of the Committee on the Judiciary I will say that there will be no objection to the proposition.

I will look at the amendment of the gentleman from Allegheny (Mr. MacConnell) and possibly may so change it as to meet the idea advanced by the gentleman from Susquehanna.

Mr. J. M. WETHERILL. I desire to move to reconsider the vote by which the first section of the present article was passed.

The CHAIRMAN. The Chair will state that such a motion is not in order at this time.

Mr. J. M. WETHERILL. It seems to me that the section is practically repealed by the amendment offered by my colleague from Schuylkill (Mr. Bartholomew).

The CHAIRMAN. The motion of the gentleman from Schuylkill is not now in order. The Chair will entertain the motion of the delegate as soon as the pending question is disposed of.

Mr. TURRELL. I would suggest that we wait until the chairman of the Committee on the Judiciary makes his proposed modification of the pending amendment.

Mr. ARMSTRONG. I have indicated an amendment that will probably cover the suggestions of the gentleman from Susquehanna.

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

The CLERK read as follows:

"The number of judges, in any of said courts, or in any county where the establishment of any additional court may be authorized by law, may be increased from time to time: *Provided*, That whenever such increase shall either in said city or county amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid.

Mr. MACCONNELL. I accept the amendment.

The CHAIRMAN. The delegate from Allegheny accepts the proposed amendment of the delegate from Lycoming. The question is on the amendment of the gentleman from Allegheny.

The amendment was agreed to.

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

Mr. CASSIDY. Mr. Chairman: I hope that this section will not be adopted. I do not profess to speak for the bar of Philadelphia; but so far as I have any knowledge of the sentiment of the bar of this city, it is utterly opposed to this section and in an overwhelming majority opposed to it. I do not understand upon what principle it is that the Committee on the Judiciary think there are so many members of the Convention desirous of disturbing the arrangement of the courts of Philadelphia. The bar of Philadelphia is not here complaining of that arrangement. The people of Philadelphia have found no fault with it. There have been no petitions presented in favor of any change whatever, that I have heard. I know of no member of the Convention authorized to speak for any great body of the people or of the bar, seeking any change in the ordinary course of proceedings in our courts, and I confess that I am astonished to find that a committee of so much learning and character as the Committee upon the Judiciary have, without that request, introduced a section that is in every respect revolutionary.

All that I understand the bar of Philadelphia and the courts of Philadelphia desire is simply to be let alone. We have gone through a process of codification, as far as this Constitution is concerned, that has certainly been enough to load it down to its defeat; and you have only to put on a few more of these things to settle the whole matter. If after all the various matters on the subject of legislation, all the various matters on the subject of corporations, we add to this a little more legislation upon the subject of the Judiciary, it will hardly be worth while to trouble the people at all about it. In the city of Philadelphia we have contrived to get along with a district court since 1810, and with a common pleas, a recognized constitutional court in all of our Constitutions, without complaint, as far as I know, from anybody. So far as my friend from Philadelphia (Mr. Biddle) desires to have the district court made a constitutional court, I will go as far as he will on that subject. I do not know that I have any objection to that; on the contrary I have some feeling about it; I am in favor of making our courts strong and decided, and not subject to legislative wills and



whims. I am in favor of putting into the Constitution a provision stating that there shall be in the city of Philadelphia, two courts as there now are, one to be styled the district court and the other the court of common pleas, and at the proper time, I desire to offer an amendment to the amendment that will read that as far as the city of Philadelphia is concerned, there shall be two courts, each court composed of five judges, as they are now, so that there shall be no further interference with them in any way; and it seems to me that the safest course for the people or for the representatives of the people in Convention assembled, is not to interfere in a beaten track where it has resulted in good. There is no clamor for reform in our judiciary, no out-cry against the jurisdiction or against the existence of the courts in the city of Philadelphia, and therefore I see no reason to interfere with them.

It is now proposed to make four distinct and separate courts of co-ordinate jurisdiction. How shall we practice law in the city of Philadelphia under such an arrangement? You go into one court, on any one day, with a list of the various kinds of cases there pending, and the other three courts will have the same kinds of cases; so that we shall never be able to get on. I have understood that lawyers had the faculty of dividing their clients' estates, but I never heard that they had the power of dividing themselves, so that unless you can get up a sort of a legal co-partnership, by which you will have four or five members of the same legal firm, running here and running there, I do not understand how we shall ever be able to practice law under this at all.

Then my friend and colleague from the city, (Mr. Biddle,) further seems to think that there is a great advantage in having a judge come from one of these courts to the criminal court. I think that is rather specious. I do not think there is much in that idea when you come to examine it. You must educate a man in the criminal law, as in any other branch of legal science. He must have experience, he must have training, and he must have knowledge of the subject upon which he is about to pass. Yet under this proposed plan of four courts and twelve judges, with a judge going into the criminal court once in a year, it would take him thirty years to become familiar with its rules of practice. You can very readily understand how very uncertain and unsettled all

our criminal law will be if we are to have twelve different criminal judges sitting in a year. Each judge will go there but once in a year. We have not the advantage, you must remember, of having his opinion reviewed by the Supreme Court except in capital cases. The ordinary matters do not, as we all understand, go up. So that the law is unsettled; it depends entirely on the personal view of the judge who is trying the cause; and that evil we are to have to the extent of twelve times in a year. Surely it is bad enough as it is, when it is changed to the extent of five times by our different common pleas judges coming in; but then we get them oftener, they being at hand, and that is a very great advantage. If this was adopted we should have them but once in a year.

I do submit that the very thing that my friend complains of, that we should not have numbers of little bits of jurisdictions, numbers of little bits of courts, is what this section as it is now presented will accomplish. Instead of having two courts who will conform to the desires of the bar and recognize the usage of the practitioners there, we shall have four distinct courts, each setting up for itself, each desiring to maintain its own dignity, and each having a distinct and separate system of practice and series of rules, so that it will be impossible almost, it seems to me, to carry on the judicial business of the county of Philadelphia under any such organization.

But above all that, the experience that we have gone through in the city of Philadelphia, I submit to my colleagues on this floor and to members of the Convention generally, has been such as to entitle the present organization to our respect. Why should we change it? There is no denial of justice. As the district court is now going on, the lists are being rapidly worked up. The common pleas has its work in hand and by the time the recess comes around they will have disposed of all their business and will have no business over. Why should that court be transferred to any other court; or why should the president of that court, who has presided for twenty odd years with dignity, who has experience and learning, be transferred from his place as the presiding judge of the common pleas of the county of Philadelphia to take the presidency of a common pleas No. 3 or a common pleas No. 2, for no reason, for no advantage to the public, and for no de-

fault of his own? And why should the learned judge who has presided for almost as many years in the district court with learning and with character, be transferred from the dignity of his position, to which the people elevated him, to a common pleas to be called No. 1 or No. 2 for no reason that we have yet heard?

Of course we would agree to all these transfers, no matter how much they affected personal dignity or personal desire, if they were for the public benefit. That I am waiting to be pointed out. I have listened patiently to hear a reason assigned for this radical and I say revolutionary change. I trust that the section will be voted down and that the profession in Philadelphia and the people of Philadelphia will be permitted to practice law in their own way as they have done heretofore.

MR. NEWLIN. Mr. Chairman: I trust the section will be adopted; and as the reasons why the section should be adopted have been so well stated by my distinguished colleague (Mr. Biddle) I do not propose to go over the ground. I simply desire to state, so far as I am concerned, as a member from the city, that I favor the report of the committee.

MR. CUYLER. Mr. Chairman: I have but just come in, having been detained from the Convention this afternoon, and therefore I have not had the advantage of hearing the discussion from gentlemen who have preceded me. Nevertheless I am in favor of the section as it stands written. I do not regard the change which it proposes as radical and revolutionary, as my colleague (Mr. Cassidy) calls it, at all.

The district court at the present time is simply a branch of the common pleas. Its jurisdiction is carved out of the common pleas and forms a portion of what in every other county of the State except Allegheny is a common pleas jurisdiction; and in like manner the district court of Allegheny county is carved out of the common pleas. It therefore is no radical or revolutionary change; it is only a modification of an existing system. It has some advantages. One of those advantages is that it is uniform through all the counties of the State; that it applies to the county of Philadelphia and the county of Allegheny a system which prevails everywhere else through the State and makes the system of courts throughout the State absolutely uniform.

Another advantage is that it prevents that divided responsibility which a numerous court entails, and concentrates more upon each individual judge a direct and personal responsibility for the action of his court. In other words, a court of three judges is a better court than a court of five judges in very many respects. Each judge has a larger share of responsibility for the action of the court; it operates upon him more directly, and he feels it more strongly than where it is divided among a larger number of judges.

As to the objection with regard to any inconvenience to the profession, I fail to perceive it. We have now in the city of Philadelphia practically just as many courts to divide the time of a practicing lawyer as there would be under the new system. Our district court sits as four courts for jury trials at the same period of time; and while these four district courts are sitting for jury trials, the common pleas may be sitting in three or four different shapes; also the *nisi prius* in addition, and also the Supreme Court in banc. It is entirely practicable for a lawyer in large practice in the city of Philadelphia to find himself, when the clock strikes ten in the morning, engaged at the same instant of time in three or four different courts. That has happened to my brother Biddle, I am very sure. It has happened to me, I know. Doubtless it has happened to Mr. Cassidy. We have our system by which we arrange all that matter. It involves no serious inconvenience to counsel.

I do not perceive that these inconveniences are going to be multiplied in the slightest degree by any such change. They will be no larger under the new system than they were under the old. I do think that the concentration of responsibility upon the judges and the establishing of a uniform system throughout the State are marked advantages worthy of consideration; and I think I am justified in saying also that so far as the judges of our district court are concerned—Mr. Cassidy spoke with reference to their feelings in regard to it—they are favorable to such a change; they see no disadvantage in it at all. If there is to be any modification whatever of the existing system the modification proposed by this section would meet their approbation.

For these reasons and for others which I will not take up the time of the committee by stating now, I propose to vote for the section as it stands.

Mr. BUCKALEW. I should like to ask the gentleman from Philadelphia a question as to the necessity of additional judges in the city of Philadelphia. It has been alleged that the business is pretty well worked up with the present force. I do not want to vote for additional judges anywhere unless in a case of absolute necessity.

Mr. CUYLER. I thank the gentleman for inviting my attention to that matter. I should have mentioned that the addition of these two judges is a great advantage. The judges of the district court met with the Committee on the Judiciary on an evening a few weeks ago and upon an inquiry addressed to the judges the answer was made that there were over one thousand six hundred cases awaiting trial in the district court of this county at the present time. My own opinion is that the addition of two judges is imperatively demanded and that their distribution by increasing the number of judges of the existing courts would only aggravate the inconvenience that I have just now adverted to, of a too great division of responsibility in each tribunal.

Mr. BARTHOLOMEW. Will the gentleman from Philadelphia allow me to interrupt him by a suggestion?

Mr. CUYLER. Yes, sir.

Mr. BARTHOLOMEW. I suppose the abolition of the *nisi prius* court will throw considerable business into the district court and the common pleas.

Mr. CUYLER. My own opinion is, though I do not desire to discuss that question at the present time, that for reasons which I will hereafter state, the existence of the *nisi prius* court in this county is a necessity. If it should be abolished, two additional judges would be needed, and not only two but four additional judges would be needed to do the work.

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

The section as amended was adopted, there being on a division ayes fifty-seven, noes eight.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 6. Each court shall have exclusive jurisdiction of all proceedings at law and in equity commenced therein, subject to change of venue as hereinafter provided.

Mr. BUCKALEW. I would ask before that is voted on what necessity is there

for it. It is the general principle that when jurisdiction once attaches, the court has control.

Mr. ARMSTRONG. It is for the purpose of preventing any possible misapprehension, to render it certain that the jurisdiction of the court shall be exclusive. It was thought necessary to prevent misapprehension and uncertainty.

The section was agreed to.

Mr. J. M. WETHERILL. I renew my motion to reconsider the vote by which the first section of the article was adopted.

The CHAIRMAN. The delegate from Schuylkill rises to a question of privilege and moves that the committee reconsider the vote by which they adopted the first section.

Mr. HUNSICKER. For the purpose of enabling the question to be brought before the Convention, I second that motion.

The CHAIRMAN. The motion to reconsider is seconded.

Mr. ARMSTRONG. There ought to be an explanation given of the reason for the motion. The motion was made by the gentleman from Schuylkill not at any suggestion of mine, although I was informed it would be made, and therefore I speak on account of what I am informed the purpose is. It is for the purpose of restoring the limitation upon the power of the Legislature to organize other courts than those provided for in this Constitution. I suggest, however, to gentlemen that the consideration of that question be postponed until, say, to-morrow, at least until we go through with the other sections. The motion having been made, it can lie on the table, and let it come up hereafter.

The CHAIRMAN. The motion cannot lie on the table in committee but must be now disposed of.

Mr. CUYLER. The motion to reconsider might be agreed to and then we might not proceed with the consideration until to-morrow morning.

Mr. ARMSTRONG. Let no action be taken on the question, but let it come up for consideration after we have gone through with the other sections.

The CHAIRMAN. The motion to reconsider must be disposed of before anything else is proceeded with.

Mr. J. M. WETHERILL. I withdraw the motion to reconsider for the present. I will renew it at such time as may be deemed advisable hereafter.

The CHAIRMAN. The motion to reconsider is withdrawn. The next section will be read.

The CLERK read the next section as follows :

SECTION 7. 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.

Mr. ANDREW REED. I move to amend by striking out all after the word "necessary" in the eighth line to the word "each" in the twelfth line.

The CHAIRMAN. The words proposed to be stricken out will be read.

The CLERK read as follows :

"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."

Mr. ANDREW REED. I make this motion, Mr. Chairman, because this is not the proper place for that clause. The Committee on County, Township and Borough Officers, whose report is the proper place where this should belong, have arranged a provision which will cover all this, and it is not necessary to have it in each article in the Constitution.

Mr. MACCONNELL. That refers only to the county and township officers, and this refers to the city.

Mr. ANDREW REED. The Committee on Counties and Township Officers have reported to have prothonotaries county officers. I refer to the report of the committee, (No. 13,) where it is provided :

"All county, township, and borough officers who receive compensations 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 a proper officer for and on account of the said county, township or borough as may be directed by law : *Provided, however,* That the salary shall not exceed the fees."

Now, in the first section of that report the prothonotary and clerk of the court are made county officers, and that will refer to all these officers, and make it entirely unnecessary for us to burden the report of the Judiciary Committee with it.

Mr. ARMSTRONG. I call the attention of the gentleman to the fact that there is a separate committee on cities and city charters, and also the committee to which he refers, on counties, townships, and boroughs. The committee to which he refers has reported a section which relates to the counties, townships, and boroughs, but not to the cities, and the Committee on Cities has not reported anything that would cover the provision in this section, which is confined to the cities, and therefore it would seem to be appropriate here.

Mr. ANDREW REED. The subject was considered in our committee, and it was there supposed that a prothonotary was a county officer, and I think that is a general understanding.

Mr. CUYLER. May I appeal to my friend to withdraw his amendment, simply for this reason : There are no words that I could use which could overstate the importance in this county of this provision ; and if hereafter it presents itself in the section to which he alludes, we may then insert it there and strike it out here ; but I want to see it secure by being fastened in the Constitution anyhow. I mean to say, Mr. Chairman, that the fees derived from these offices in this county are simply stupendous, and that they are the great source of the vilest political corruption. The pursuit of the particular offices to which this section points and the distribution made for corrupt political purposes of the enormous profits that are derived from them are to-day the most fruitful source of political corruption in our county. Therefore I go for striking them out wherever their head appears. Let us get it out here. If, afterwards, it is desired to make the instrument more symmetrical and give it more grace and finish, that can easily be done ; but do not let us omit

any opportunity that presents itself to prevent the continuance of the existing system.

Mr. ANDREW REED. My only purpose in offering the amendment was to prevent a repetition of this provision in the Constitution. I have the same object in view that the gentleman from Philadelphia has. However, I will withdraw the amendment.

Mr. TURRELL. The words, "and of the circuit court" in the fourteenth line of the section should be stricken out, I suppose.

Mr. ARMSTRONG. Yes, sir; I have marked them in my copy, and I proposed to strike them out.

The CHAIRMAN. By unanimous consent those words will be stricken out.

Mr. HANNA. I move to amend the section by striking out the word "necessary" in the eighth line, and inserting the words "authorized by said courts." It will then read: "The said prothonotary and the said chief clerks shall respectively appoint such assistants as may be authorized by said courts." I think that is proper.

Mr. ARMSTRONG. I think that is rather an improvement. I thank the gentleman for offering the amendment.

Mr. BUCKALEW. I suggest to the gentleman that he had better add the words he has suggested, leaving the word "necessary" in, so as to read, "may be necessary and authorized by said courts."

Mr. ARMSTRONG. That would be still better.

Mr. HANNA. I submit that is included. They will not appoint any officers unless they are necessary.

Mr. BUCKALEW. We want the court to have a rule for their consent, and that rule is, the public necessity.

Mr. HANNA. Well, I have no objection.

The CHAIRMAN. The word "necessary" will be reinstated. The Chair understands that the gentleman from Philadelphia modifies his amendment accordingly.

Mr. HANNA. Yes, sir.

The amendment was agreed to.

Mr. HANNA. I move further to amend in the ninth line by striking out the words "by law," and inserting after the word "by" where it occurs the second time in the line the words, "the councils of;" so that it will read: "And the said prothonotary and chief clerks and their assistants shall receive fixed salaries to be deter-

mined and paid by the councils of said city."

It is proper that I should explain what I intend by this amendment. It will be noticed that if we pass the section as recommended by the committee, while the courts will appoint the necessary officers, yet their fixed salaries are to be determined by law. They must apply to the Legislature to fix their salaries, which I think would be a very improper mode of determining them. At present, the judges of our courts have the right to appoint their tipstaves and fix their salaries, which are paid by the councils of the city. We annually appropriate the necessary amount to pay those salaries. I submit that we should carry out that system as far as possible; that we should not make it necessary for the clerks and prothonotaries of the courts to go to the Legislature in order to have their salaries fixed. I would rather have the courts fix their salaries than have them go to the Legislature; but I much prefer the proposition that I now offer, that those who pay the money shall fix the amount of salary. Now, we have nothing to do with it. The councils of the city, who have charge of the financial affairs of the city, are better acquainted with the necessities of the case. They know how much these men should be paid; they know the amounts at which the finances of the city will permit them to fix their salaries; and as all the fees and costs received by these officers are to be paid into the city treasury, it is just and proper that the officers of the city should not only pay the salaries of these men, but fix the amount of those salaries. What objection can there be to that?

I do submit, sir, that the Convention should take this view of the subject; and from my experience in this matter, I believe it is the proper way to do. The salaries of all city officers, and these are, in effect, city officers, should be regulated by those persons most familiar with the subject. I therefore hope that this amendment which I have offered, providing that these salaries shall be determined and paid by the councils of the city, will be adopted.

Mr. HAY. I have one objection to this section, and it is an objection that will apply to all sections which are framed in like manner; and that is, that it forms a rule applicable alone to one county in the Commonwealth, and not applicable to any other county. To all such sections I

am opposed, and shall vote against them all. I see no reason why the courts of the county of Philadelphia should appoint their clerks, and the courts of other counties of the Commonwealth should not have the same power. I cannot see any reason why that distinction should exist. I should like very much to have the principle of it explained. I can certainly see no reason why the courts of the county of Allegheny should not have the power which is here given to the courts of the city of Philadelphia.

Mr. ARMSTRONG. In reply to the inquiry of the gentleman from Allegheny, I will state that it was proposed and desired by the committee to insert the same provision as to the county of Allegheny, but we were informed by one of the gentlemen of the committee representing the city of Pittsburg that it is already the law there, and that therefore it would be superfluous and unnecessary as applied to that city.

Mr. HAY. Does the gentleman mean to say that these offices are appointed by the courts there?

Mr. ARMSTRONG. No, sir; as to the payment of fees.

Mr. HAY. I referred particularly to the matter of appointments.

Mr. ARMSTRONG. The committee have not the least objection if the gentleman from Allegheny makes an amendment to that affect and it meets the approval of his colleagues from that county.

Mr. HAY. I certainly will not propose any such amendment, being opposed to the whole section and shall vote to strike it out, because I am opposed to giving this power of appointment to the courts. I think the people ought to elect their officers, and that the courts ought not to have the power to appoint them, especially for such a long period as that provided for in the section under consideration. Sir, the manner in which such appointments have been sometimes made in other courts that have had this power, has been a public scandal. Relatives and other dependents have been appointed in a manner I think utterly abhorrent to the good tastes of all honest citizens.

Mr. ARMSTRONG. On behalf of the committee I will further state, as to that particular power as it applied solely to the city of Philadelphia, we were disposed to take the advice of those who stated that they had experience of the inconvenience, frauds, and outrages which surrounded that office in its present organi-

zation, and as they recommended this as a means of preventing evils of this enormity and widely extended character, we adopted their suggestion; and as long as the members from Philadelphia believe that this is the best mode to correct the evils which we all know exist in connection with this office in their own city, I think it is judicious to allow the section to stand as it is.

Mr. HAY. My objection to the section is, that it is special legislation for one county of the Commonwealth in the Constitution, to which I am as much opposed as I am to special legislation by the Legislature of the State. We do not want one Constitution for the city of Philadelphia and another and a different Constitution for the rest of the Commonwealth.

Mr. D. N. WHITE. I trust the amendment of the gentleman from Philadelphia (Mr. Hanna) will not be adopted. It would be an anomaly in the Constitution to fix the salaries of these officers in that way. I suppose the object of the gentleman is to prevent the Legislature from making the salaries too high. I suggest that the proper amendment would be that the salaries of these officers should never be higher than that of the judges of the courts. That would accomplish the object the gentleman has in view.

Mr. BIDDLE. You do not agree to let them receive the fees directly, do you?

Mr. D. N. WHITE. No, sir. I would insert after the word "law" in the tenth line the words, "which salaries shall never be higher than that of the judges of the courts." I do not like the idea of inserting in the Constitution a provision that the councils of this city shall fix the salaries of any officers.

Mr. LITTLETON. Mr. Chairman: The question before the committee is on the amendment offered by the gentleman from Philadelphia, (Mr. Hanna,) and to that amendment I cannot agree. We should not forget that we are making a provision for the administration of justice throughout the State, and it would be an anomaly, in my opinion, and strange indeed, to place the administration of justice in one sense under the jurisdiction of a city council, because this amendment would give that council power to regulate the compensation of officers of the court, and they might exercise that power very improperly, very unjustly, and perhaps in such a manner as actually to interfere with the administration of justice itself. It seems to me, that the adoption of this

amendment would be a violation of correct principle.

If we get rid of the enormous fee system that now exists, in my opinion, there can be no objection to a proper regulation of this subject by act of Assembly. Then these officials will be paid a fair compensation, but bearing no comparison to the amounts now obtained, and they will not have the power that they have at present. In my judgment, therefore, the matter can be safely left to the Legislature representing the sovereignty of the State, and should not be delegated to the authorities of a municipality. However great may be the improvement by the adoption of this principle of appointing the assistants, clerks, prothonotaries, and others, (and I think it will be a great improvement,) I do not think it would be wise to give to the councils of the city the right to say what these officers should receive, any more than it would to permit them to fix the salaries of the judges themselves.

My friend has mentioned the fact, which exists, undoubtedly, that the city of Philadelphia does appropriate annually a large sum of money as a salary to the judges of the county. That has never been done in any other county of the State and never was done before in the history of the State, and in my humble opinion was in flat violation of the Constitution and laws. It ought never to have been done, and it is simply one of the numerous exactions levied on this community. I am reminded that it is authorized by act of Assembly, but, sir, by an act of Assembly which was not passed boldly by itself but placed in an annual appropriation bill, so that the then Governor could not, if he had seen fit, veto it without being under the necessity of calling an extra session of the Legislature. It was put there expressly for that purpose, as I happen to know so that it could not be vetoed by him without entailing a very heavy expense upon the State. So I do not think that anything is gathered from the argument that, because in this city, we pay a salary to the judges therefore we should fix the compensation of their subordinate officers. It is an injustice to us, as a municipality to be compelled to support the judiciary of the State, but I do not think that a sufficient reason for asking for the councils of the city an improper power such as the right to fix the compensation of the officers of the courts any more than, as I have observed before, it would be

right to give them power to fix the salaries of the judges themselves.

Mr. CASSIDY. Mr. Chairman: I am in favor of this section and opposed to the amendment of my colleague (Mr. Hanna.) I am opposed to permitting the councils of Philadelphia to pass upon the question of the emoluments of any of the officers of the courts, and I am for a like reason opposed to permitting the Legislature to do it. I am in favor of the courts, who have the appointing power and who now fix the rate of pay to their tipstaves, fixing also the rate of pay to their clerks, and then let the councils make the appropriation to pay it as they do the salaries and various other matters that are incident to the administration of justice; and, as my friend (Mr. Littleton) has pointed out, it would be exceedingly dangerous to put in the power of a legislative body that is entirely controlled by one political party or the other, the right to determine the question of salary, for then they might very well do that which my friend from Allegheny (Mr. D. N. White) said just now, they might well fix the salaries at a much greater rate than those of the judges themselves, and they would be very likely to do it, especially if they were of the same political party as those in power. I therefore am opposed to permitting them to have even the temptation to do that, and trust that the committee themselves will agree that there shall be some words inserted by which the respective courts shall fix the salaries and that the councils shall make the appropriation necessary to pay them, because without that it seems to me this change that is radically just and proper, will be ineffectual.

Mr. J. N. PURVIANCE. It is not likely we shall get a vote on this section this evening. I would therefore move that the committee rise, report progress, and ask leave to sit again. ["No!" "No!"]

The motion was not agreed to.

Mr. CUYLER. I only want to say a word. My colleague (Mr. Cassidy) anticipated the remarks I was about to make. I think we should leave this to be fixed by the courts which as Mr. Cassidy has remarked fix the compensation of tipstaves and fix the compensation of all who exercise subordinate judicial duties under their appointment, such as masters in chancery, auditors &c., and they may be safely trusted with the exercise of this power. I therefore move to amend the amendment by striking out the words "councils of Phil-

adelphia" and inserting the words "by the court."

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. J. R. READ. I should like to call the attention of my colleague to the fact that it would not be very sensible to put that where the gentleman (Mr. Hanna) proposes to put his amendment. His motion was to put in these words: "To be determined and paid by the councils of the city of Philadelphia." It would hardly do for us to put in "to be determined and paid by the courts." On the contrary I think the better plan would be to vote down the amendment, and then afterwards to insert "to be determined by the respective courts and paid by the said city."

Mr. CUYLER. I withdraw the amendment, but I shall renew it after the vote is taken on the other.

The CHAIRMAN. The question then is on the amendment of the delegate from Philadelphia (Mr. Hanna.)

The amendment was rejected.

Mr. CUYLER. Now I move to amend by striking out the words, "by law" and inserting "by the judges of the said courts."

Mr. BUCKALEW. I hope this amendment will not be insisted upon. It is treading on very dangerous ground, although it is a very small matter. This idea of giving the courts patronage of any sort in the way of appointments is against principle; and is it to be understood that the courts are to fix any salary they please, say twenty thousand dollars, and allow any number of assistants? It is getting up the reminiscences of what judges have done amiss in former years in appointing their relatives and a thousand things which occasioned more scandal than anything we can put in the Constitution.

Mr. CUYLER. I withdraw the amendment.

The CHAIRMAN. The amendment is withdrawn.

Mr. D. N. WHITE. I move after the word "law" to insert "and which shall never be higher than the salaries of the judges of the court."

Mr. CUYLER and Mr. NEWLIN. "Never as high."

Mr. D. N. WHITE. I will say "never as high."

Mr. D. W. PATTERSON. I move to amend the amendment by striking out of the section all after the word "courts"

in the second line to the word "and" in the tenth line.

The CHAIRMAN. That would include the amendment offered by the delegate from Allegheny.

Mr. D. W. PATTERSON. Yes, sir, and the object is to test the sense of the committee whether they are going to introduce into this Constitution a feature of this kind. After all their talk about keeping the judiciary pure and putting them above any temptation or even suspicion, now they are going to give them extensive patronage! See how it will operate on a gentleman who is a candidate for a judgeship. His son, or his nephew, or his friend will say "now I will support you if you will appoint me," and thus put them under suspicion from the very first. It is striking at the purity of the judiciary; and after so much talk from so many gentlemen here, and particularly our Philadelphia friends, we hear them advocating this principle in the report which is made for that city.

Mr. NEWLIN. Will the gentleman from Lancaster permit a suggestion?

Mr. D. W. PATTERSON. Certainly.

Mr. NEWLIN. The objection might be obviated by simply providing that no relative of any judge shall be appointed.

Mr. D. W. PATTERSON. Oh let us not give into their hands any patronage at all. Let the prothonotaries be appointed in the manner fixed by law heretofore, and then it will read:

"For the city of Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts; and all fees collected in said office, except such as may be by law due 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 as are or may be directed by law."

I merely bring this to the attention of the committee. I need not enlarge upon it. It has been enlarged upon heretofore and been advocated by these very gentlemen; and now I want to put it to them whether they are going to put that upon the judiciary and thus from the very first throw suspicion upon the judiciary.

Mr. LILLY. I am not from Philadelphia and perhaps am not expected to mix in this debate. I am almost ready to vote for anything that the Philadelphia delegates can agree upon with the Committee on the Judiciary on the subject;



but I do believe from my intercourse with the people of Philadelphia that if you put in a provision that these appointments shall be made by the judges of the courts, you will put such a weight upon the Constitution that it will go down before the people.

That is my opinion of it. I believe they will roll up in this city an unprecedented majority against it, and not only against this section if put to a separate vote, but a majority against the whole Constitution all the way through, and I shall be glad to see the Convention yield to the motion of the gentleman from Lancaster. We have voted down the appointment of judges. I was in favor of the appointing system for all the judges. I believe it would be better to appoint all the judges by the Governor than it would be to allow the courts to appoint their clerks, for the reason stated by the gentleman from Lancaster and for the reasons given by other gentlemen around me. I have mixed somewhat with the people of Phil-

adelphia during the several months past, and I believe that if you put this section in the Constitution allowing the courts to appoint these officers you will give it a load to carry that I am afraid we cannot stand up under before the people.

Now I move that the committee of the whole 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 (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 to-morrow.

Mr. J. R. READ. I move that we adjourn.

The motion was agreed to, and at six o'clock P. M. the Convention adjourned.

## NINETY-FIFTH DAY.

THURSDAY, *May 8, 1873.*

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

### PRAYER.

Rev. J. W. CURRY offered up the following prayer:

Oh Lord, we come before Thee this morning with hearts full of gratitude, remembering that Thy goodness and mercy have followed us all the days of our lives. We thank Thee for the privilege we enjoy this morning of calling upon Thy holy name. We are taught to believe in Thy word that the grass withereth and the flower thereof fadeth, but Thy word endureth forever. We are glad that we live in a land where we can read Thy word for ourselves, the blessed truth that teaches us the way to Heaven. Grant us the influence of Thy Spirit this morning, and enable us to remember that while we are in a life of probation, it is the time to prepare to meet God.

While we are assembled here to-day a delegation of our number are about depositing in the earth the form of one who was active among us in this Convention a few days ago. By his presence and wise counsels we were cheered. To-day we look upon the open tomb ready to receive his mortal remains. We know, oh Lord, in our hearts that this shall be our fate.

Death is abroad in the land. Thou hast summoned also one of the great jurists of our country to appear before Thy bar. The American people mourn to-day, feeling that they have lost a leader and righteous judge. Would it please Thee, Almighty Father, to prepare our hearts to do thy will while we live here upon the earth.

We invoke Thy blessing, Oh God, upon the members of this Convention, especially those who are well advanced in years, those who are near the verge of eternity. Oh Lord, give them health to enjoy the life which now is and prepare them for the promise of the life which is to come, and may we who are of younger years strive to make our calling and election

sure, and when it is ours to die save us all in Thine everlasting kingdom. For Christs' sake. Amen.

### JOURNAL.

The Journal of yesterday was read and approved.

### DEATH OF CHIEF JUSTICE CHASE.

Mr. J. N. PURVIANCE. Mr. President: I offer the following resolutions:

*Resolved*, That this Convention has learned with profound sorrow of the death of the Hon. Salmon P. Chase, whose distinguished services as Senator and Secretary of the Treasury of the United States during the most trying times of the rebellion entitle him to a high place as one of the ablest and purest of American statesmen, and the ability and fidelity with which he performed the duties of Chief Justice of the Supreme Court of the United States, alike acceptable to the bar and the country, justly rank him as one of the most able and profound jurists of the age.

*Resolved*, That a copy of this resolution be forwarded to the family of the deceased.

The resolutions were ordered to a second reading and were read the second time.

The resolutions were adopted unanimously.

### BINDING THE DEBATES.

Mr. HAY. On the second day of this month a resolution was adopted by this Convention to be found on page 499 of the Journal, in these words:

*"Resolved*, That the Printer, B. Singerly, bind the Journal and Debates of the Convention in half binding, leather backs and tips, with paper sides and gilt labels, and forward to the residence of each member, by express, thirty copies of each volume of the Debates and five copies of the Journal, as soon as they are bound, and that each member shall receipt therefor to the Printer, which receipt shall be his voucher, the expense of boxing and expressing to be paid by the Convention."

I rise to move that the vote by which that resolution was adopted be reconsidered. If it is in order, I would like to

make a statement of the reasons for which I make that motion. The resolution directs payments to be made by the Convention which it is possible may not now be legally done. Until the question of the propriety of such payments is determined by the Convention, I think that the resolution should not be adopted but should be permitted to lie over; and that no payments should previously be made. It is proper for me also to say that before making this motion, I consulted with the chairman of the Committee on Printing (Mr. Newlin) who offered the resolution, and that he has no objection to its reconsideration. I move the reconsideration of this resolution.

Mr. D. N. WHITE. Is not the motion to re-consider precluded on account of the limitation of days in which a reconsideration must be moved?

Mr. HAY. It is within six days.

The PRESIDENT. Is the motion to reconsider seconded?

Mr. ALRICKS. I second it.

The PRESIDENT. Did the gentleman vote in the affirmative?

Mr. ALRICKS. Yes, sir.

The motion to reconsider was agreed to.

Mr. HAY. Mr. President: I now move that the further consideration of the resolution be postponed for the present, in order that the question referred to may be determined by the Convention before the resolution is again before the House.

The motion to postpone was agreed to.

#### LEAVE OF ABSENCE.

Mr. KAINE asked and obtained leave of absence for Mr. Hanna, of Philadelphia, for this afternoon.

#### ADJOURNMENT SINE DIE.

Mr. HAY offered the following resolution which was read twice:

*Resolved*, That this Convention will adjourn *sine die* on the fourth day of July next.

Mr. HAY. I have offered this resolution, not only because it expresses my own desire, but also at the suggestion of other members of the Convention, believing that the Convention will never adjourn unless some day is fixed for that purpose.

Mr. WRIGHT. I move to amend by inserting after the word "on," the words "or before." We may get through before the fourth of July, and we do not want to remain here until then if we finish our business before that time.

The PRESIDENT. The question is on the amendment.

Mr. LILLY. I am opposed to this resolution. I think if we go to work and do our duty here, we may possibly get ready to adjourn by the time fixed in the resolution; but I think it comes with very bad grace from the gentleman from Allegheny who has made a motion on every occasion to extend the time of gentlemen who were speaking.

Mr. HAY. I desire to correct the gentleman. He mistakes—

Mr. LILLY. He has, as near as I can say, done that all the way through; and now he offers a resolution to fix the time of adjournment. He has done as much as any man on the floor to delay the action of this Convention, and now for him to make this motion, I think is altogether out of place. I am as anxious to get away as anybody, and I think every member will bear me out in that assertion. I have done everything possible in my power to get on with business; but the gentleman who offers this resolution has dozens of times moved and voted to extend the time of gentlemen who had spoken the length of time allotted by our rules.

Mr. HAY. Mr. President: I should like to have been allowed to explain while the gentleman who has last spoken was on the floor. He, certainly, is mistaken in every assertion he has made in regard to myself, excepting the one that I did upon one occasion move to have the time of the gentleman from Philadelphia, (Mr. Woodward,) who had made a minority report from the Judiciary Committee, extended, and the Convention was, on that occasion, almost unanimously with me; but I appeal to every member of the Convention upon this floor whether I have not refrained from occupying its time in debate or in any other manner. Certainly there is no member here less responsible than myself for the continuance of the sessions of this Convention. I have studiously refrained from speaking; have spoken much less than the gentleman from Carbon (Mr. Lilly) himself; and have occupied much less of the time of the Convention than almost any other member.

Mr. LILLY. I want to ask the gentleman from Allegheny if he did not make a motion to extend the time of a gentleman here by offering an amendment?

Mr. HAY. I never did. Not upon a single occasion.

Mr. LILLY. I desire to bear testimony to the assiduity of the gentleman from Allegheny; he has been steadily at his post making short speeches when he has taken the floor—always speaking to the question before the Convention—but his good nature has usually carried away his desire to shorten the session when other persons have exceeded their time, by giving them facilities to use the time of the House. He made the motion in committee of the whole that led to the virtual repeal of the twenty minute rule, which, in my judgment, has saved so much time. If we will go back to it or reduce the speeches to ten minutes, we then may begin to consider that the end of the labors of the Convention may be reached some time inside of a year, but the fourth of July, 1873, will not in my opinion see one-tenth of the business through second reading. Let us vote this resolution down and go to work in good earnest to get through, and when we can see when we may adjourn, then fix the day.

Mr. HAY. I heartily concur in every desire to shorten the sessions of the Convention, am willing, and wish, to remain in session every day until the work of the body is done. I am opposed to any adjournment over until the Constitution is completed, and think that ought to be done by the fourth of July.

Mr. HARRY WHITE. I hope due consideration will be given to this resolution before it passes. I assume that every delegate present and absent is responsible for the delay of our business if any delay has occurred. I assume also that every delegate present and absent has fully performed his duty as his intelligence and conscience dictate. Any personal reflections, it occurs to me, are not proper at this time.

I will observe, furthermore, that it seems to me foolish, to use no harsher term, to pass at this time this resolution. All of us, I apprehend, desire to expedite and discharge the public business. The acceptability of our work by the people depends somewhat upon the expedition with which we perform our functions. At the same time the virtue and the character of our work depends somewhat on the deliberation with which it is performed. It should be kept in mind that we are not a legislative body. The usual custom of adopting a resolution by one legislative body fixing a time for adjournment and sending it to the other is to give notice to the other body of the feel-

ings of its members. We are a body in ourselves.

No arguments of this kind should avail in the consideration of this question. It seems to me unwise to take so important a step at this time when we have not completed the consideration in committee of the whole of all the reports of the committees. It occurs to me that we may be able to get through our work at an earlier day than that named. When we have completed in committee of the whole the consideration of all the reports of the different committees, it will be then abundant time for us to fix the day of adjournment. It is quite possible that a resolution of this kind is created by a feeling which has gone forth in the community that some desire exists in the Convention to accept invitations to visit Bedford or other points during the summer season. Now I apprehend no proposition to adjourn from this place to any watering place or to any summer resort can receive a respectable vote; and the public and the delegates, I apprehend, need not be disturbed upon that question. It seems to me wise for us to refuse at this time to pass any resolution like this for the time will come, within the next three weeks possibly, when we shall see the end of our work.

I therefore move to postpone for the present the consideration of this resolution.

The PRESIDENT. The question is on the motion to postpone.

On this motion the yeas and nays were required by Mr. Edwards and Mr. Corbett and were as follow, viz:

#### Y E A S .

Messrs. Addicks, Alricks, Armstrong, Bartholomew, Beebe, Bowman, Brodhead, Broomall, Buckalew, Carey, Carter, Cochran, Craig, Curry, Davis, Ellis, Ewing, Fulton, Gilpin, Green, Hanna, Hemphill, Heverin, Horton, Hunsicker, Kaine, Lilly, Long, MacConnell, McCulloch, Mantor, Minor, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Read, John R., Runk, Struthers, Temple, Turrell, Walker, Wetherill, J. M., Wherry, White, Harry, White, J. W. F., Woodward and Meredith, *President*—47.

#### N A Y S .

Messrs. Achenbach, Bannan, Black, Charles A., Boyd, Corbett, Cronmiller, Darlington, De France, Dunning, Edwards, Elliott, Funck, Hay, Lawrence,

M'Clellan, M'Murray, Mann, Metzger, Mitchell, Niles, Purman, Purviance, John N., Smith, Henry W., Stanton, Stewart, White, David N., and Worrell—27

So the question was determined in the affirmative, and the resolution was postponed.

ABSENT.—Messrs. Ainey, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Biddle, Bigler, Black, J. S., Brown, Campbell, Cassidy, Church, Clark, Collins, Corson, Curtin, Cuyler, Dallas, Dodd, Fell, Finney, Gibson, Gowen, Guthrie, Hall, Harvey, Hazzard, Howard, Knight, Lamberton, Landis, Lear, Littleton, MacVeagh, M'Camant, Mott, Newlin, Parsons, Patterson, T. H. B., Porter, Pughe, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Van Reed, Wetherill, John Price, and Wright—58.

#### PRIVATE CORPORATIONS.

Mr. WOODWARD. I present the report of the Committee on Private Corporations.

The PRESIDENT. The report will be read.

The Clerk read the article reported by Mr. Woodward, as follows:

#### ARTICLE — CORPORATIONS.

SECTION 1. The term "corporations," as used in this article, shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

SECTION 2. No exclusive rights, privileges or immunities shall ever be granted by the Legislature to any person, company or corporation.

SECTION 3. All railroads, canals, highways and other modes of public travel, transportation or communication, by telegraph or otherwise, shall be open and equally free upon the same terms and conditions to all the citizens of the State. No preference, favor or special privileges shall be allowed to any person, company, or corporation, or discriminations made, in any cases or in any manner, to the injury of citizens of the State.

SECTION 4. The Legislature shall pass no special laws giving corporate power, but all corporations shall be formed, their charters be changed or amended and their powers and privileges be defined and

regulated by general laws, which shall be uniform as to the class to which they relate. And the grant of all such charters, powers and privileges, shall be subject to the right of the Legislature to revoke, annul or change the same whenever they shall become injurious to the public, in such manner that no injustice shall be done to the corporators.

SECTION 5. All existing charters or grants of special or exclusive privilege, under which a *bona fide* organization shall not have taken place at the time of the adoption of this Constitution, shall thereafter have no validity.

SECTION 6. The Legislature shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same for the benefit of such corporation, except upon the terms of such corporation thereafter holding such charter subject to the provisions of this Constitution.

SECTION 7. The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking by the Legislature of the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals, and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such a manner as to infringe upon the equal right of individuals or the general well-being of the State.

SECTION 8. The stockholders of every corporation doing business in this State shall be individually liable for its indebtedness to an amount equal to the par value of the stock held by them respectively when such indebtedness was incurred; and this liability shall not be held to be a penalty, but shall be taken to be a part of the contract under which such corporation may transact business in this State.

SECTION 9. Corporations shall be liable for all injuries resulting to persons or property from the negligence of their agents, servants or employees in the discharge of their duties; and such liability shall not be limited by any act of the Legislature or regulation of the corporation.

SECTION 10. Private property shall not be taken, damaged or appropriated by any corporation for public purposes, until full compensation shall be first paid or adequately secured; which compensation

shall be the actual value of the property taken or the damage likely to be sustained, and shall if desired by any party in interest, be ascertained by a court and jury of the county where the property is situated.

SECTION 11. In all elections for the managing officers of a corporation each member or shareholder shall have as many votes as he has shares, multiplied by the number of officers to be elected; and he may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer.

SECTION 12. No corporations, except for the construction of railroads, canals and other public highways, or for charitable, literary, scientific or religious purposes, shall be created for a longer period than twenty years.

SECTION 13. No foreign corporation shall hold any real estate in this State; and no such corporation shall do any business in any city or county of the State without having a known place of business in such city or county, and an authorized agent upon whom process may be served.

SECTION 14. No corporation shall engage in any other business than that expressly authorized in its charter nor shall it take or hold any real estate except what may be necessary and proper for its legitimate business.

SECTION 15. The franchise, the rolling stock and movable property of all corporations shall be deemed personal property and shall be liable as such to execution and sale for their debts.

SECTION 16. Any general banking law which shall be passed shall provide for the registry and countersigning by an officer of the State of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the State Treasurer for the redemption of such notes or bills.

SECTION 17. No suspension of specie payments shall be permitted or sanctioned by law; and no banking or other corporation shall receive, directly or indirectly, a greater rate of interest than is allowed by law to individuals.

SECTION 18. The majority of the managing officers of all corporations organized under the laws of this State shall be citizens of the State.

SECTION 19. All insurance companies incorporated by other States and doing business in this State shall be subject to the same rate and measure of taxation

as similar companies incorporated by this State.

SECTION 20. No building or loan association or similar organization shall be permitted or established which does not provide in its charter for publication at stated periods of the names of all shareholders, the number of shares held by each and the amount of money paid in and the number of shares borrowed upon and by whom received.

SECTION 21. Any number of persons, upon making such publication as the Legislature may by general law prescribe, may associate themselves together for business purposes with several liabilities proportionate only to their individual investments.

SECTION 22. At the first general election after this Constitution takes effect, and every three years thereafter, the qualified electors of the Commonwealth shall elect a State officer to be called the Comptroller of Corporations, whose duty shall be to see that every corporation doing business in Pennsylvania has complied with all the provisions of its charter and the requirements of the law, and hereafter no corporation shall begin to do business until it has obtained from said Comptroller, a certificate that it has the capital paid in which may be required by law, and has in all respects conformed to all laws relating to the class of corporations to which it belongs.

It shall be the duty of said Comptroller to report all delinquencies of corporations to the Attorney General, and to the Legislature, with such recommendation as the nature of the case may require.

THE PRESIDENT. This article has now been read the first time. It will be laid on the table and printed in journal form.

#### THE JUDICIAL SYSTEM.

Mr. LAWRENCE. I move that the House resolve itself into committee of the whole on the article reported by the Committee on the Judiciary.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose yesterday they had under consideration the amendment proposed by the delegate from Lancaster, (Mr. D. W. Patterson,) which was to strike out of the seventh section from the word "to" in the second line to the word "and" in the tenth line inclusive.

Mr. LILLY. I believe I had the floor on that question at the time of the adjournment yesterday. I am in favor of the amendment of the gentleman from Lancaster for the reasons stated by me last evening. I have but a very few words to say in addition. Since then I have had conversations with intelligent gentlemen not belonging to the Convention, as well as members of the Convention, on this subject, and I really feel that all I said yesterday was right and proper, that the adoption of such a provision as this will be loading down the Constitution in such a way that there will be a tremendous majority against allowing the judges of the courts to appoint these officers. I am for allowing the people to elect them. I think there should be some regulation as to their salaries. I am disposed to accept all that has been said by the gentleman from Philadelphia and others, that the fees of these officers in many counties are entirely too large for the duties performed by them. I think there should be an amendment made providing that their salary should never be as great as that of the judge presiding in the court. I hope that at present the amendment of the gentleman from Lancaster will be adopted.

Mr. J. R. READ. Mr. Chairman: I trust that the amendment of the gentleman from Lancaster will not be adopted; in advocating the section before the committee I do not understand that I am doing any violence to the conviction that I have, that the judges should have no extra-judicial power. I agree perfectly that the power of making general appointments shall be taken away from them; but I believe that the officers named in this section are in a measure proper subjects for appointment by the court. Who are these officers? They are the mere custodians of the records; they are the keepers of the seal; they are the officers who enter the minutes and decrees of the court. To them must we confide the proper entry of those decrees and minutes and the keeping with safety of the records and dockets of the court. That being so, as they are purely officers of the court, why should they not be appointed by that department which alone they are to serve?

Again, Mr. Chairman, by adopting this section as it comes from the committee, it seems to me we fix the responsibility just where we want to have it. In the event of a prothonotary or a clerk discharging his duties in an improper manner, either

carelessly or with gross negligence, we have then a tribunal to whom we can go and make complaint, and by whom the fault can be rectified; whereas under existing circumstances, if such a thing occurs, we are obliged to wait until the recurring election comes around, and then the remedy may be worse than the disease, and the substitute worse than the original.

I do not believe that any evil would result from the adoption of this section. It has been so carefully prepared that it seems to me to meet the case exactly. By it the courts are authorized to appoint the clerks and to appoint the prothonotary, and then the prothonotary is authorized, by and with the approval of the court, to appoint his assistants. The salary is to be determined by the Legislature. I am not willing to give the court the power to fix the salary, but I am as I have indicated in favor of permitting them to select the persons who are to fill these positions of importance and of trust, and then letting the Legislature after those persons have been selected fix the salary and say what compensation they shall receive. I trust, Mr. Chairman, that this Convention will not be deterred from adopting this section by the language that has fallen from the lips of the gentleman from Carbon (Mr. Lilly.) It is quite true that there are a large number of people in this city who would be opposed to such a change as this; but I think if we are to give their thoughts and their language the attention to which they think they are entitled we might as well have adjourned when we met at Harrisburg, for nothing that this Convention will do, I assure you, sir, will meet their approval. No check that we place upon the power of the Legislature, no limit that we place upon the power of the Executive, no power that we strip from the judiciary will be satisfactory to this large class in this community. I do hope that the members of this Convention will not be deterred by the note of warning sounded by my friend from Carbon; for we may rest assured that they will oppose the adoption of the fruits of our labor.

They will fight it with all their power and with all their evil zeal. If we are to hesitate in the work we have before us and prune and shape our measures for the purpose of conciliating them with mild and gentle remedies, our Constitution will be a mere rope of sand. Of course they are not willing to have taken from

them any prize that they have heretofore had, and the offices that are mentioned in this section are really great golden prizes. One or two of them yield an annual income of nearly thirty-five thousand dollars. Is it any wonder then that the people alluded to by my friend from Carbon should be jealous and watchful of those prizes, and that they should be anxious to induce us to leave them alone?

In saying this I do not wish to be understood as being opposed to the people retaining all the power that they deem necessary for their safe government; but these are not political offices. They are simply ministerial positions of trust and confidence, for which men should be selected with the greatest discrimination, in which there should be some direct and immediate responsibility, and there can be no such responsibility unless the power of making the appointments is vested in some tribunal to which we can go with our word of complaint upon the performance of an improper act, and ask for its immediate redress. That cannot be done under the present state of affairs. If the prothonotary employs negligent assistants who carelessly do the work that is confided to them, important as it is, we have no redress. We can go to the court and make complaint and the court can complain to the prothonotary, and that is the end of it. The members of the bar of this city know well that serious and important work in the offices of the courts of this city is not done as well as it should be; and in saying that I speak as mildly as I possibly can, trusting that I shall not hurt the feelings of any incumbent of any of these offices.

MR. BEEBE. Will the gentleman from Philadelphia allow himself to be interrogated?

MR. J. R. READ. Certainly.

MR. BEEBE. Then I desire to ask the gentleman whether if this power is vested in the judges it cannot be used as electioneering capital by candidates for the judiciary?

MR. J. R. READ. I think not, and for a manifest reason: The judges are not all to be elected at one time, and the officers of the courts are to be appointed for the term of six years. I do not understand either that the judges of the same court are to be elected at the same time the prothonotaries are to be appointed or the clerks selected. Not more than two or three judges will be chosen at any one time and they will not be judges of the same court. The

prothonotary is to be appointed by all the judges of all the courts acting together, and the chief clerk of each court by the three judges who compose that court. I do not understand that the judges will be elected at the same time, and hence combinations would not be possible between candidates for the bench and aspirants for offices under the courts.

For these reasons I am in favor of the section as it has been reported by the Committee on the Judiciary, and I do trust that as this section is to be applied only to the city of Philadelphia, unless the gentlemen from Allegheny desire its provisions extended to that county which I will favor if they so request, the section will be adopted by the committee of the whole.

If the section, as it has been submitted by the Judiciary Committee, be adopted by this Convention the people of Philadelphia will I am sure be very grateful. The effect of it will be to relieve them from some of the excessive taxation that now presses upon them. Think, sir, of one office in this city yielding an income of \$80,000 a year. If that money were to go into the treasury of the city, where it rightfully belongs, it would to that extent relieve us of the heavy load of taxation which is now upon us. And this is but one office. The fees that are accumulated in other offices in this city are proportionately large; and for that reason among others I ask the committee of the whole to adopt the section just as the Committee on the Judiciary have reported it.

MR. HANNA. Before my colleague takes his seat, I desire to ask him whether in this section under consideration, it is proposed that the courts shall appoint the officer to whom he alludes.

MR. J. R. READ. No, sir. I used that simply by way of illustration.

MR. J. N. PURVIANCE. Mr. Chairman: I propose not only to vote for the amendment of the gentleman from Lancaster; but I shall vote against the entire section for the reason among others, that I think we should endeavor to preserve uniformity in the Constitution. Since the adoption of the Constitution of 1838, the prothonotaries of all the courts of common pleas and other courts of this Commonwealth, except the Supreme Court, have been elected by the people.

I am opposed to this section for another reason. It makes a change in the tenure of the office. The prothonotary in the



city of Philadelphia is to hold office for the period of six years, whilst in all the other counties of the Commonwealth they are to hold their offices but for three years. I see no reason whatever for the change and I agree with my friend from Carbon (Mr. Lilly), that if we adopt this section and thus make a different rule for the city and county of Philadelphia from that which we do for all the other counties of the Commonwealth, it will beget in this city and perhaps elsewhere a general opposition to the whole Constitution; we shall perhaps load it down with such provisions, obnoxious to the people generally that the whole Constitution may fail when submitted for ratification.

Mr. STEWART. Will the gentleman from Butler allow me to ask him a question?

Mr. J. N. PURVIANCE. With pleasure.

Mr. STEWART. I wish the gentleman to define more clearly the quarter from which that opposition to the Constitution will come.

Mr. J. N. PURVIANCE. It will come from the most active of all the politicians of the city and county of Philadelphia, those who desire office—

Mr. STEWART. Then I do not understand the gentleman to say that it will come from the mass of the people themselves?

Mr. J. N. PURVIANCE. It would come from the mass of the people who would give but little attention to it through the influence of these politicians.

Mr. HAY. It would also come from those who do not want one Constitution for the city of Philadelphia and another for the remainder of the State.

Mr. J. N. PURVIANCE. Precisely; it would come from another class who want uniformity in our Constitution. We must not forget that we are not here as a legislative body, but that we are here to make a Constitution, that we are here to declare general principles, and to leave details to the Legislature. We are always to have a Legislature as long as this government stands, and we must confide in the integrity and in the capacity of the Legislature to pass laws, and I would here remark that, so far as my experience goes, the Legislature of Pennsylvania have always proved faithful in the passage of all general laws. The evil, that which begets corruption in the Legislature, is special legislation; and if this Convention can give to the people of the Commonwealth amendments to check

and stop entirely special legislation, they will have attained a great point, they will have attained a great victory. Look now, for example, at our statutes. So far as relates to the law of decedents, of intestates, of elections, the regulation of the courts of justice, of the common schools, of township and county laws, revenue laws, &c., throughout all the Commonwealth, and all the other laws of a general character which have been passed by the Legislature, especially the laws passed immediately after the adoption of the Constitution of 1838, and you will find that the Legislature have not been unmindful of their duty. They have ever responded to the wishes of their constituents in the passage of all important, useful general laws.

Therefore I say that in this Constitution we should, as far as practicable, avoid all kinds of special or exclusive acts by which one county will have a different constitutional law from another county, by which the prothonotary of one county will hold his office for a longer period of time than the prothonotary of another county. I trust that this section will be voted down entirely and that this Convention will see the importance of endeavoring, as far as practicable, to preserve uniformity in whatever we may do in this body.

Mr. TEMPLE. Mr. Chairman: I hope that the section under consideration will be adopted by the committee of the whole in the precise form in which it came from the Committee on the Judiciary. I desire briefly to advocate its adoption, but beg leave to preface the remarks that I am about to make with a reference to what has taken place in the Legislature of Pennsylvania during the last few years.

We all know—and to this fact I desire to specially call the attention of members from the country—that there has been great evil connected with what in Philadelphia are known as the "Row Offices." The people have endeavored to correct the abuses, there have been great outcries against the management of those offices, and during the last two or three sessions of the Legislature an effort was made by some of the members from Philadelphia to have the system changed and to have all our municipal officers paid salaries. We remember that during the last session Senator McClure had a measure passed through the Senate, it being one of a series of bills that have been proposed for a number of years, providing

that the offices of the city of Philadelphia should be made salaried. He was very liberal in the salaries that he proposed to pay these officers; but yet by reason of certain influences that measure did not become a law. It has failed to become a law on several different occasions.

I think, Mr. Chairman, that the people of the city of Philadelphia are prepared for this change, and if we agree to give them the change in a constitutional provision, I think the people will ratify what we do. I had hoped that the delegates from the city of Philadelphia upon this particular matter would have had some control. So far as relates to other portions of the State, I have nothing to say. I made it my business this morning to go around and see the delegates from the city generally, and I find that they are almost unanimously in favor of a provision in the Constitution something like this.

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

Mr. TEMPLE. Very well.

Mr. HAY. I desire to ask the gentleman from Philadelphia whether it is his opinion that the delegates from Philadelphia here should be permitted to make a Constitution for this city and that the rest of us should make one for the rest of the State.

Mr. TEMPLE. Mr. Chairman: I did not mean to say that; but I only meant to say this, and I desire to be understood: That the delegates from the city of Philadelphia are presumed to understand in these matters of practice and general routine in office what the people want, better than the delegates from the country, and that is as far as I desired or intended to go. The delegates upon this floor from the city of Philadelphia are almost unanimously of opinion that some provision like this ought to be put in the Constitution, and I believe that they favor it, first, because we need it, and second, because we have failed to get it from the Legislature. There never was a measure more commendable and more strenuously urged than the one embraced in this section. It is almost identical with the one introduced by Senator M'Clure last winter in the Senate of Pennsylvania. He succeeded in having it passed there, and I believe the same bill had passed the Senate two or three times before; but when it went into the other branch of the Legislature, it was killed off and the peo-

ple of this city were left in the position that they have been heretofore placed in. Therefore I say that I believe the delegates from the city ought to have some control over this matter or at least the delegates from the country should be willing to advise with them about it.

There is another thought that strikes me in addition to that which has already been stated so ably by the delegate from Philadelphia (Mr. J. R. Read) and that is this: I take it that the office of prothonotary of the court is merely a clerical office. He stands to the court in almost the position of a clerk to his employer. He is to have charge of the records, he is to perform all duty that is necessary to be performed in order to keep the records of the court clear and correct, and certainly the court ought to have some control over its own records; and the only way to accomplish this is to give the courts authority to select their own officers.

Now let us see whether the courts have any control over the prothonotaries in the city of Philadelphia. It was stated here a few days ago by a distinguished delegate who has had great experience in matters of this kind and who has had an opportunity from his experience upon the bench and at the bar also to get an inside view into these matters, that although a prothonotary had wilfully violated the law, although he had actually committed a gross misdemeanor in office, yet there was no mode of getting at it. He could not be reached by any proper process of the court; and I remember very well when that matter was being discussed in the public press that I myself was spoken to by some of the judges of this city and was asked to try to have adopted just such a measure as this. The judges in the city of Philadelphia are perfectly willing, as I understand, to be relieved of all appointing power, except as to their own tipstaves and clerks; and if delegates from the country understood how things are conducted in this city, my judgment is that there would be no two sides to this question.

Mr. Chairman, it has been stated here that opposition would grow up against the Constitution if such a clause as this were put in. If we are to sit quietly by and adopt a Constitution which will be voted for and approved of by the class of persons referred to by the delegate from Carbon, and also by the delegate from Philadelphia who spoke last, then surely this Convention never ought to have as-

sembled. I mean to say that if the delegates upon this floor think there is a necessity for placing an article like this in the Constitution and if we are to be deterred from making that a part of the Constitution because it will be distasteful to a class of persons who have been described by my colleague (Mr. J. R. Read)—and it is unnecessary for me to refer to them again—if we are to desist from incorporating a wholesome provision in the Constitution of Pennsylvania because that class of people will be arrayed against it, I must confess that our labors will be in vain.

The delegate from Butler (Mr. J. N. Purviance) seems to think that this class of men will defeat the Constitution. I will take the liberty of saying to the delegate from Butler, and also to the delegate from Carbon, that they are very much mistaken if they believe that a wholesome provision in the Constitution of Pennsylvania such as this, a provision which meets the wants and requirements of our people, will be rejected. I cannot believe that when this Constitution comes to be submitted to the people of Pennsylvania, and when the people of Philadelphia come to vote on it and they see and read in that Constitution that hereafter our courts shall appoint the prothonotaries and have something to say in reference to appointing the clerks in their offices—I cannot believe that the people will sit by and see a provision like that voted down, or, in other words, see the whole Constitution voted down simply to oblige the class of men referred to by the delegate from Butler. I cannot believe that our people will be so remiss.

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

Mr. TEMPLE. Certainly.

Mr. NILES. If the judges appoint the prothonotaries, will not the same men who now control the election of the officers of the court control the nomination of the judges, and will not the same corruption that has heretofore prevailed in the nomination and election of these officers be used in the future in the nomination and in the election of the judiciary?

Mr. TEMPLE. That is a two-fold question and therefore requires two answers. In the first place I claim that the persons who nominate the judges will be of no different character from those who nominate them now. The judges will be nominated by the same Conventions and prob-

ably by the same class of people who make the nominations now.

In answer to the other branch of the question as to whether the prothonotaries appointed by the court will not be of the same class of people, I will say this: In the first place, if this section is adopted there will be no such inducements held out to persons to secure these lucrative offices. If this is made a salaried office as it should be, there will be no such inducements held out for persons to secure the nomination and election. I will say further to the delegate from Tioga that in my judgment if the judges of our courts had the appointment of these officers, their own clerks and their own tipstaves, there would be no such crying evil in Philadelphia as there has been for the last twenty years. Why, Mr. Chairman, it has been stated by a delegate from Philadelphia that some of the officers in the city of Philadelphia who do not perform a single part of the duties of prothonotary, who are not even known to the profession, who are not even known to the courts in many instances, receive a compensation almost incomputable in the way of figures; there is hardly any way of getting at it. During the early sittings of this Convention in Harrisburg there was information furnished the Convention giving us an idea of what the row offices in the city of Philadelphia were worth, and there was none of them that made less than \$30,000 to \$40,000 or \$50,000 a year.

It has been the subject of comment both in private circles and in public meetings upon more than one occasion that if the Legislature would only pass a bill relating to the city of Philadelphia whereby these offices would be made salaried and the fees taken in at the various offices placed in the city treasury, there would be four times, yes, I almost had said there would be ten times sufficient to pay the whole judiciary of the city of Philadelphia.

Mr. HANNA. I should like to ask my friend a question.

Mr. TEMPLE. Certainly.

Mr. HANNA. I ask the gentleman whether he does not know that the prothonotaries pay out of their receipts the salaries of all their clerks and subordinates?

Mr. TEMPLE. I do know that.

Mr. HANNA. The gentleman has not stated it.

Mr. TEMPLE. I do know that; but it is immaterial. Certainly the prothonotaries pay their own clerks; but my friend

knows very well that it only requires a term of three years in the city of Philadelphia in any of our row offices for a person paying his clerks as the delegate states to become immensely wealthy. Now in the term of three years a person who does not do a single particle towards the performance of the duty of the office, after paying his clerks and all the expenses of the office, becomes immensely wealthy.

Well now, Mr. Chairman, this is too serious a question to be considered in an envious manner, because I am not here to advocate what I believe to be a reform simply because certain persons have made money out of the offices; but I do believe it will be the sense of this Convention that if it is established that our whole judiciary system in the city of Philadelphia could be kept up without expense to the State or county, and suitors be charged no more for their litigation than they are now charged, we are ready to adopt this reform. I believe that this Convention will recognize a fact like this; and if we can show the delegates who are not familiar with the mode of procedure in Philadelphia that there is sufficient money taken from the pockets of suitors to pay for the whole judicial machinery of the city of Philadelphia, they will assist us to adopt a reform like this.

Mr. Chairman, I would not advocate the insertion of this section in this Convention if I believed we could get redress from the Legislature. I have as much hope as has the delegate from Butler that we shall have a different Legislature probably in the future; but I say that the influences which can be brought to bear upon the Legislature—I do not mean of a pecuniary character necessarily but influences of a private and personal character—to permit the law to remain as it is are of such a character that we need not hope for redress in that quarter. The prothonotaries will go to the Legislature; the members are besieged by their friends, and hosts of them they always have, and the reason they generally advance is this: They say nobody is hurt by this, the suitors are obliged to pay the expenses, and therefore nobody is particularly injured; the county at least has nothing drawn from its treasury to pay these prothonotaries, and the Legislature with the assistance generally of the members from the city of Philadelphia have let this law remain as it is.

Mr. Chairman, I do trust that the delegates from the interior of the State will

give this matter their careful and thoughtful consideration. I trust that they will give it that thought which it justly deserves. We are not asking simply for a change for the sake of change only. We are not asking it simply because certain persons have become wealthy, but we are asking for it in order that a vast amount of money now paid into the pockets of half a dozen individuals may go into the city treasury and be used for the purpose of paying the judiciary of our county.

There is one other thought, Mr. Chairman, and then I have done. The great reason, in my judgment, outside of the mere question of salary, which is a secondary consideration, why the courts should have the appointing of their own clerks and prothonotaries is because the records of our courts are not secure as they are now kept.

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

Mr. TEMPLE. Certainly.

Mr. DARLINGTON. Would there be any danger, in his apprehension, if such a plan were adopted, that any of the judges would have young men of their own relations, who would be acceptable officers?

Mr. TEMPLE. Of course it is possible that the judges might appoint some of their relatives; but I will go so far, if that is objectionable to the delegate from Chester, as to say that the judges should not appoint their own relatives, and that they should not appoint, if he wishes to go that far, anybody recommended by their relatives. We are simply asking for what we believe to be right and just.

But, Mr. Chairman, as I was saying, the records of the courts of the city and county of Philadelphia are not safe in their present condition. It is idle to use mild phrases on this subject: The records are not safe. That has been demonstrated on this floor by the distinguished gentlemen from Philadelphia (Mr. Woodward and Mr. Dallas.) There has been more than one instance where the records have been taken from the office, and when we applied to the courts, they were powerless to afford relief. Delegates will naturally ask if the courts have not control of the matter. We say to you, gentlemen, the courts have no control over it except this far: The person who permits or commits this outrage upon the records can be taken before an alderman and bound over for his appearance at court, and even if he be convicted of this high crime and misde-

meanor, under our present system he can still hold on to his office, in defiance of the judges.

I will add but one word more, as I think there are other delegates here from the city of Philadelphia who intend to say something on this subject. I trust that the delegates from the interior of the State will give this matter a careful consideration and not be led away with the assumption that the Legislature will give us relief, and, on the other hand, will not be deterred by the idea that this section if agreed to will tend to defeat the adoption of the Constitution. The other delegates from the city, who can explain this matter probably better than I can, I trust will receive a careful and patient hearing, as they all seem to be anxious to have the section adopted.

Mr. WORRELL. Mr. Chairman: I rise merely to say that all my constituents favor the insertion of a provision of this kind in the Constitution. There is no question upon which I have received a fuller expression of sentiment than upon this, and that without regard to party.

I favor this proposition for three reasons. The first is that it will to a very great extent prevent the corruption which now exists in our elections. The dissatisfaction with the manner in which elections are conducted in Philadelphia is owing almost entirely to the scramble and contest over these moneyed offices.

The second reason is, that it will prevent the oppression of the people through the collection of illegal fees, for I believe that the moment these officers are appointed by the courts and are paid salaries fixed by law, the bar and the community will resist the extortion which is now practiced by nearly every public officer in the charging of illegal fees.

My third reason is, that we shall obtain in this manner competent and responsible officers to perform the duties of these positions, and that those duties will as a consequence be more correctly and more satisfactorily performed.

I trust that this section will be adopted. I think I can say that it is almost the unanimous sentiment of all the people of my district that such a provision as this should become part of our fundamental law.

Mr. MANN. Mr. Chairman: As one of the country delegates I am prepared to vote for some provision either here or elsewhere in the Constitution that shall make the officers referred to in this section sal-

aried officers instead of feed officers. Having done that, I should like to have the gentleman from the city sitting before me (Mr. Temple) tell me why the people are not just as competent to elect the prothonotary as to elect the judge? I may misapprehend the force of the arguments that have been made, but so far as I understand them, the only reason given why the people are not as competent to elect the prothonotary as the judge is to appoint, is, that as they are entitled to such large fees there is some inducement to corruption; but we propose to take away this inducement to corruption by making the office a salaried one. If I understand the argument then, there is nothing left in favor of the appointment of these officers except the single one that otherwise the judge will not have control of the office. Well, sir, the law will, and that I think is better than the control of the judge.

A good deal of complaint has been made here that some of the prothonotaries have not at all times done as they ought to have done with regard to the duties of the office. Sir, I undertake to say as serious a charge can be made against an officer appointed by the judges of our highest court as any that can be made against the officers elected by the people of Philadelphia. If that argument is to be made here, it will work against all the prothonotaries or clerks of courts, for the most serious charge that has ever been made against a prothonotary or clerk of a court has been made against one who was appointed by the judges of the Supreme Court of Pennsylvania, and I believe as well founded as any charge that has ever been made against any other officer.

I take it, it is hardly worth while to allude to such things upon this section. They do not grow out of the election or appointment of the officers. Every officer should be made subordinate to the law, whether he is a prothonotary or a judge. All officers should be amenable to the same high authority. I cannot understand why the people are competent to elect a judge and incompetent to elect a clerk who is to serve them. For one, I will not consent that any such power as this shall be given to the judges in any part of Pennsylvania unless different arguments shall be given from those heretofore adduced.

Mr. H. W. PALMER. I object to this section for one reason that I have not yet heard assigned, and that is, that it creates

a new constitutional office, to wit, a chief clerk for the courts. It provides that one prothonotary shall be appointed for all the courts and that each court shall have one chief clerk. I have heard of a chief clerk of the court of quarter sessions and a chief clerk of the orphans' court, but I have never heard of a prothonotary's chief clerk as a constitutional officer or an officer recognized by law.

Now, who is to be this chief clerk and what are to be his duties and responsibilities? Suppose that he fails to enter a judgment or makes a mistake; is the prothonotary to be responsible? Of course it would be wrong to hold the prothonotary responsible, because he is not the prothonotary's appointee; the prothonotary has nothing to do with him. He is a man appointed by somebody else, and therefore the prothonotary should not be held responsible for the mistakes of the chief clerk.

I do not suppose that we intend to create any new offices by this Constitution or at least very few, if any; and for this reason, if for no other, I shall vote against the section. I am against it also for the other reasons mentioned by gentlemen here. I do not see any reason why there should be one rule for Philadelphia and another rule for other counties of the State. I do not see any reason why there should be special legislation in the Constitution because the public officers of Philadelphia make money out of their offices. It is said that they use this money for corrupt purposes. Very likely; but if the city of Philadelphia is governed by a little gang of thieves of both parties, the remedy is in the hands of the people themselves. Let the honest people of Philadelphia, who are in a majority I believe of nine-tenths or eleven-twelfths, rise up and attend to their own political affairs as people do in other sections of the State, and then there will be no trouble. The substance of the complaint, as I understand it, is that these row officers make a great deal of money and that they use it for political purposes. In other words, because two little gangs of thieves have got the politics of Philadelphia in hand, therefore there should be some special legislation in the Constitution to meet that evil. I am against it.

Mr. MANTOR. Mr. Chairman: I shall trouble the committee but a moment on this subject. If the delegates on this floor from Philadelphia will tell us exactly

what they want, perhaps we might know better how to act. We were met here yesterday by the gentleman from Philadelphia on the opposite side of this Hall (Mr. Cuyler) who advocated a certain proposition in relation to the wants of the people of Philadelphia on the judiciary. The gentleman from Philadelphia who sits at my right (Mr. Cassidy) advocated the measure in altogether a different light. We found those two gentlemen in direct opposition, one against the other, both claiming that they understand the needs of the courts. We are called upon this morning to listen and to meet the same class of arguments. "No harmony yet."

Now, sir, so far as this section is concerned, I am in favor of the amendment offered by the gentleman from Lancaster (Mr. D. W. Patterson.) I am opposed, and have ever been opposed, to vesting anything like an appointing power in the courts. I believe in the people. I think it would be a very dangerous precedent, to say the least of it; and in a city like Philadelphia—where such patronage brings to its recipient such great gain.—I think that all over the State, and I am not one of those persons who come from the interior of the State, that has been referred to, but I am from the opposite side of the State—we have been very generally satisfied with our elections. We elect the prothonotary there, as they do here and elsewhere over the State; and I think that would be the wish of most of the people over the State, where they can understand what their real duties are, and I think they do understand them, and would prefer uniformity; and while I shall be glad at all times to "accommodate" by my vote, the citizens of "Philadelphia," when they may desire anything to facilitate their special interest so long as that interest does not come in conflict with the general welfare of the State.

Sir, I concur heartily with the remarks made by the gentleman from Butler (Mr. J. N. Purviance) this morning, and that is, unless we cease right where we are and drive out of our labors so much of this thing which is legislation, we shall sit here a long time before we complete the work of our Constitution. It is really astonishing the amount of legislation we are placing in the Constitution. Everything which bears on that point, in my opinion, it is our bounden duty to force out of our work and leave it to the people or the Legislature, where it belongs. We had here a few days ago a re-

port on railroads and canals which contained nineteen sections; we have the judiciary report now before us which contains thirty-six sections; and we have a report on legislation which contains thirty-seven sections; all told, about ninety-two sections in three articles. It does not look to me as though we were progressing very rapidly so long as we permit so much legislation to be brought into these articles.

Mr. BEEBE. Will the delegate from Crawford allow me to ask him what committees he is on?

Mr. MANTOR. The gentleman would like to know what committees I am on. Well, I am on the *Committee on Schedule not a very important committee, I suppose*, and I am also on the Committee on County, Township and Borough Officers—not such an important committee as the gentleman is upon. I was one of the unfortunate delegates of this Constitutional Convention who had not the honor to be appointed on any very important committee, but I am content.

Mr. BEEBE. They have not yet reported.

Mr. MANTOR. They have reported on the Committee on Counties, Township and Borough Officers. Not on Schedule, of course, and we have left much to the Legislature as the gentleman will see. Now, sir, I think we should turn our attention directly to this particular thing, and that is, forcing out of all these reports as they come up before us everything which bears upon its face anything like legislation; and whatever officers are to occupy place, and have been elected heretofore—in my judgment the same offices should be filled by election and not by appointment.

Mr. CUYLER. Mr. Chairman: The possibility of the existence of such a condition of things in the city of Philadelphia and still more the fact of its existence as the gentleman from Luzerne states, furnishes the highest reason for the constitutional amendment which he deprecates, but which I would support. If it be possible under our system of government that a little band of thieves, as he was pleased to designate them, of both parties, can secure the control of the politics of the city of Philadelphia—the possibility of such a thing and still more the fact of its existence makes it not only right but necessary that the Convention should interfere to control it. He asks the very significant question why the good people

of Philadelphia who make up eleven-twelfths of the population as he supposes, do not go to the polls and control this matter? I tell him that when those eleven-twelfths of the good people of Philadelphia do go to the polls and vote, it does not make the slightest difference who votes or how they vote, their vote is never counted in recording the result,

Mr. H. W. PALMER. I suggest a vigilance committee, then.

Mr. CUYLER. The gentleman suggests a vigilance committee; and if it be not in the power of this Convention to find a remedy for such a condition of things, then I think a vigilance committee ought to be resorted to; but still I do not stop to discuss that. The fact is lamentably so. Nor do I at all sympathize with the view expressed by the gentleman from Butler who said with a great deal of earnestness that we ought not to have one system for the city of Philadelphia and another for the rest of the State, and that we ought not to adopt a Constitution with this provision in, because it would not meet the approbation of the voters of the State, or more particularly of the bad men of the State, of the men who control and record the elections that take place in our State. I know only one standard of duty here, and that is to do that which is right, and if this Convention shall at last work out the result that their consciences and their own judgments approve and the people of the State will not adopt it, let the responsibility rest where it properly belongs on the people of the State, and we at least shall have the consolation of knowing in our own consciences that we have done our duty.

Now as to the particular amendment, what I have to say about that is simply this: The functions of a court of justice extend not merely to the decision of causes and the utterance of judgment; they extend to the making of those records that shall record the actions and the transactions of the court, to those minutes that shall preserve in perpetual memory that which they actually do, and the issuing of that process which under the seal of the State and armed with the power of the people is an expression at last of the omnipotence of the people over the property and at last even over the lives of their citizens. The functions of the court extend to all these records and all these processes and to their preservation and to the fact and the mode in which copies of them

shall be certified. These are very important duties, and it is hardly less important that a proper record should be preserved of that which the court does than that the court itself should exist, that the court itself should hear and should decide causes. It is hardly less important that the process which executes a decision of the court or which summons parties before them to hear its judgment, shall be issued by competent men and shall be such as the court itself shall know is the proper process. All these are things of the last and most vital importance, and they are part of the judicial life of our courts, and for that reason, and especially for that reason, is it important that the court which is to have the responsibility of these records should have a power over them that shall be commensurate with its responsibility. If the court is to be held responsible to the world, as it is and as it ought to be, for that which it says and for that which it does, for the process which it issues to enforce its judgments, the court by reason of that very fact ought to have a power of seeing and a power of knowing that that work is properly done and done by competent hands. It follows from that one single thought, and from that only, that the power of appointing the prothonotary or chief clerk of a court should rest with the court itself. How shall you hold your court responsible for the manner in which its records are kept if the court is to have no power over the officer who is to make these records, a power by which it may punish him, may remove him, may check him, may correct, and guide him in the manner in which he discharges his duties. That is the reason why it seems to me that the appointment of the prothonotary is properly an exercise of the judicial functions of the judge.

Let us see how this thing is actually carried out. I know how it is carried out in this county of Philadelphia. No lawyer attains to the position of prothonotary; no man goes there who is educated to the very important and very responsible duties which the prothonotary discharges in the business of our courts. The men who are sent there are laymen; the men who are sent there are men who are never trained to the particular duties that are to be discharged. If I want a pair of shoes made, I do not go to a hat-maker; if I want a hat made, I do not go to a shoe-maker. If I want anything done, I go to a man who is skilled in the art that I wish to have applied and carried into effect for

my benefit. If I want these records of the courts properly kept, if I want this process properly issued, if I want proper minutes and records of what the court does to be preserved, I must go to some man whose habits of life, whose education, whose training has qualified him for the particular duty. If it be important that the judge should be educated for his duties, it is only less important, but still important, that the prothonotary should have had a similar education. Therefore it is, because I consider these functions fairly and truly judicial, that I would deposit the power of appointing the prothonotary in the court, and for that reason I do not feel the force—

Mr. H. W. PALMER. Allow me to ask a question. Would not a remedy be found in giving the court power to remove for cause and fixing salaries by law?

Mr. CUYLER. That would not be an absolute remedy, but it would be an improvement; it would be a step in the right direction without going the whole distance. The power of removal is an exceedingly delicate power to exercise. A prothonotary may by negligence and slothfulness, by ignorance of his particular duty, come short of the point at which you would remove him, and yet he might inflict a very great injury upon suitors in the court. It would be a benefit, but it would not be all that we have a right to expect. That is my answer to the gentleman from Luzerne.

Mr. H. W. PALMER. Would it be more delicate to remove an appointed prothonotary than an elected one?

Mr. CUYLER. In my view far less delicate. For the reasons I have mentioned I do not see the propriety of the amendment suggested by the gentleman from Lancaster. He founds his amendment upon a general principle which is very sound, the wisdom of which every man in this Convention I hope recognizes, and that is that we should avoid conferring patronage on the judges as much as possible. But I do not regard the appointment of the prothonotary as the exercise of patronage on the part of the court. As I have just explained, considering the duties of the prothonotary *quasi* judicial, considering his duties to be of that character that a professional training should be had thoroughly to fit a man for them, considering the fact that the judges rest under a heavy responsibility all the while and have a profound interest in that which the prothonotary does, it seems



to me that they are but exercising a kind of judicial function when they select the man who is to have the custody of their records and who is to be their official organ of communication with the public. Therefore I think that the objection does not apply.

MR. DARLINGTON. Will the gentleman allow me to ask him this question: Would it be wise in his judgment to have one rule for the city of Philadelphia and another for the other counties of the State in this respect?

MR. CUYLER. I answer that by saying that, so far as my humble judgment of the matter goes, I am in favor of having the prothonotary appointed by the courts all over the State. I think that is founded upon sound principle and I think that ought to be the rule everywhere. But speaking as a delegate from the city of Philadelphia peculiarly with reference to the interests of that city, I am disposed to get this for Philadelphia if I can, and gladly would I vote on principle to extend it to the entire State, but if gentlemen from the country districts do not think it desirable in their districts I submit and yield to their judgment in that matter; but so far as this county of my own is concerned, I cannot be so derelict to my duty under any circumstances as not to advocate with all the earnestness of my nature, the passage of this section as reported by the committee.

MR. DARLINGTON. Mr. Chairman: In the earlier history of this Convention and at all times indeed I have felt inclined as far as I could to agree to any measure that the city of Philadelphia might want for her relief in almost any department. That was my view with regard to the propriety of two elections. I thought that if Philadelphia wanted two elections in the course of a year, it was right to give them to her. I thought if she wanted to have them at a particular day to suit her convenience, it was proper she should have it, and I voted for it; but the judgment of the gentlemen from Philadelphia all around me then was that there should not be two rules upon that important question, one for the city and the other for the country; that whatever was good for one should certainly be good for the other. If that is to be considered the adopted principle of this Convention, it is a reason for the difficulty I have in agreeing to the notion that we are to have any exceptions in favor of Philadelphia with regard to these officers. So far as

regards the country and so far as my knowledge of it extends, no inconvenience, or at least no considerable inconvenience has been felt from the election of our prothonotaries and clerks of the courts and all the other officers of the counties. I do not suppose that the people of the State are willing to confess themselves unable to select proper persons to fill these offices. We never in our experience since the Constitution of 1838 has been adopted, have felt any inconvenience save perhaps in one or two instances in our county, in one of which the office was occupied by a lawyer and in another by an ignoramus. We had some difficulty in each of those two cases; nevertheless, with the assistance of competent clerks, the duty was performed generally to the satisfaction of the people. I do not know that it would have been any better done if these officers had been appointed, for if appointed by the Governor—which in general I should like rather better than the appointment by the judges—the appointments are dictated by the same men who endeavor to elect them; politicians have a hand in this always. How it would be if we conferred the power on the courts, we can only conjecture. Judges are but men, and if a near relative of a judge should present himself as a candidate for appointment to an office, equal in capacity to any other one who should be presented, it is human nature that he should incline to appoint his relative; and yet such an appointment would be very unsatisfactory just because of the jealousy everybody feels on that subject. I admire the principle of old Thomas Jefferson—little as I am of a Democrat—when he announced the doctrine that he would not appoint a relative of his own even if he was as well qualified as any one else, because he might be charged with nepotism. It would be better to appoint a stranger, all things else being equal. I should, therefore, think it a little unsafe. I have had no relatives in the office of prothonotary or judge. I do not know that the judges we have or the judges that we are to have, even if my colleague (Mr. Broomall) should be elected to that office in the future would be likely to put a relative in the office of prothonotary. I do not think he would. I do not suppose if my other colleague (Mr. Hemphill) should attain that office when he acquires more years, that he would do anything as bad as that.

But is there not danger in placing this power in the hands of the judiciary?

would, if I could, avoid giving any power of appointment to the judiciary that is not absolutely necessary in the administration of justice. I would indeed rather have, so far as it is possible to attain it, all appointments of auditors, of masters in chancery, and of everything of that kind, made at the suggestion of the members of the bar who are concerned in the cause where the appointments are made. Let them select these officers. Generally, I know, it is done; and it might be done in another way in reference to the subject now before the committee of the whole. Members of the bar might unite upon the appointment of a prothonotary, but it is not very likely. They can control in his nomination and the people will generally acquiesce in their judgment, as they do in the selection of judges.

I therefore incline to the opinion, upon the whole as this Convention have, by solemn votes, decided that the same rule must govern as to all qualifications of electors and as to all elections for the city as for the country, that the same rule should prevail as to officers; and inclining to that general notion, I feel rather impelled to support the amendment of the gentleman from Lancaster.

Mr. ALRICKS. Mr. Chairman: I hope that a provision will be inserted in the Constitution requiring the prothonotaries and clerks of our courts to be elected by the people. I have a great respect for the distinguished delegation from the city of Philadelphia, and differ with them in this regard reluctantly; but I apprehend that we shall spoil the symmetry of the instrument we are making, if we are not consistent in the course that we adopt.

My own preference would be that all judicial officers should be selected by the proper tribunal established for that purpose, and all representative officers elected by the people, and I am very sorry that I have to differ somewhat in opinion with a majority of the gentlemen in the House in regard to the selection of our judiciary. There has been but a single argument offered on this subject here that has weighed a feather with me on that question, and that is this: That the influence of corporations has become so vast in this State, that they may affect the tribunal that would have the appointment of the judges; but even confessing the full force of this argument, I still think the rule ought to be strictly adhered to, that all representative officers should be elected and all judicial officers should be

selected. It may be possible—and I have the greatest respect for the opinions of my colleagues—that the Convention are right in the conclusions at which they have arrived on the question, and that I am in the wrong, but a great many matters have been stated here as facts which are not facts—matters on which the gentlemen who announced them were mistaken. It is said that of our appointed judiciary, a number have been elected by the people, that his Honor Chief Justice Black, that Chief Justice Woodward, and Judge Agnew are instances of that kind. That is not strictly correct. These gentlemen were all in the first place selected by the Governor of the Commonwealth and by him nominated to their high stations on the bench. They were stars of the first magnitude however in their political parties and when the terms for which had been appointed expired their parties could not pass them by and they were nominated and elected by the people.

But we perhaps have disposed of that question and the only question now before us is whether our prothonotaries shall be elected by the people or appointed by the court. Had we not better preserve harmony in our deliberations? If the judges of our courts are to be elected by the people why not the prothonotaries also? That remark has very justly been made and it carries with it much force. The people shall never be able to say of me in the language of Job that I have “gone back on” them. If the people are competent to make a proper selection of a judge, they are competent to elect a prothonotary and the other officers that are necessary for the organization of a court of justice. I would not burthen the court with the appointment of its officers. They might place men in such positions with whom, if they proved negligent, they might wish to deal mildly, and it would be best to remove from them even this opportunity.

I apprehend that the distinguished gentleman from Philadelphia (Mr. Cuyler) who has just spoken, is mistaken in supposing that the court would have no control over its clerks. They have as much control over them as they have over the other officers of the court, because these clerks are sworn officers of the court, and if a clerk is guilty of a misdemeanor he can be indicted. It is true that that is the only way in which he could be removed by the court and if he were guilty of some misdemeanor he would have to be pro-

ceeded against criminally; but the courts have power over all their officers and all their clerks and they can enter a rule upon them. If they do not respect a decree of the court a rule can be entered upon them and that rule can be enforced.

But I see that there is little disposition on the part of the committee of the whole to have this debate continue and I have no desire to detain the House. I therefore with one concluding remark pass from this subject now, simply saying that in order to be consistent we will be obliged to say that the prothonotaries and the clerks of the courts of Philadelphia shall be elected as they are in the other parts of the State.

I know that there is a great deal of corruption abroad in the land, and I have no doubt that it prevails in Philadelphia. There can be no question on this subject, and I have heard gentlemen say here that the substantial and solid men of Philadelphia had nothing to do but to make up their ballots and walk to the polls in order to right the entire evil. I do not believe a word of it. I believe that in a large city like this there is a certain class of outlaws who come from every section of the country and who congregate around the cities and manipulate the ballot-box and I doubt if it is in the power of the great body of the people to keep the elections so pure that there will not occasionally be a black sheep get into office. But these are inconveniences of all municipalities and there is no way of providing against them. It may be said that you are to educate the people. Well that is very easily talked about, but I apprehend that is a matter that is not so easily accomplished and the people of all large cities must put up with inconveniences. I have no doubt that generally speaking, the people will be able to make a good selection and that when they have a good man nominated for an office they will be able to elect him.

Mr. D. N. WHITE. Mr. Chairman: I presume the principal objection to the section under consideration is the clause which provides for the appointment of the prothonotary, that we ought not to make one rule for Philadelphia and another rule for the rest of the State, and I think the objection is a very good one. It seems to me that there should be some check imposed to prevent the speculation and corruption and fraud said to exist in the public offices of this city, and probably in other places as well. With a view

of reaching this, I yesterday offered an amendment providing that the salaries of the prothonotaries shall not be as large as the salaries of the judges of the courts, but the gentleman from Lancaster (Mr. D. W. Patterson) offered another amendment which struck mine out. I had intended, this morning, to withdraw the amendment which I offered yesterday and to offer another which I will read now. I think it may perhaps satisfy the gentlemen from Philadelphia, as well as the rest of the State.

I would strike out all after the word "Philadelphia" in the first sentence, down to the word "treasury" and insert:

"And for the county of Allegheny there shall be one prothonotary's office, and one prothonotary in each, for all of said courts to hold office for the term of six years. The said prothonotaries shall respectively appoint a chief clerk for each court, and such assistants as may be necessary, subject to the approval of a majority of said judges; and the said prothonotaries and chief clerks shall receive fixed salaries to be determined by law, which shall never be as high as the salaries of the said judges; and their assistants shall receive such fixed salaries as shall be determined by a majority of the said judges, which shall be less than the salaries of the chief clerks. Said salaries shall be paid by said city and said county; and all fees collected, except such as may be by law due the Commonwealth, shall be paid by said officers into the treasuries of said city and county respectively."

This will provide for all the evils that have been spoken of, and I think that if this amendment be adopted, the people may be trusted to elect a prothonotary, whose salary will be less than that of the judges and who will be required to pay all his fees into the treasury of the county. If the amendment of the gentleman from Lancaster is not carried, I shall offer this amendment, instead of the one I offered last evening, believing that it covers the whole ground and provides for both the county of Allegheny and the city of Philadelphia. As in the previous section, they have the same description of courts, having two courts in Allegheny and three in Philadelphia, and one prothonotary for each, it appears to be necessary to put into the Constitution some arrangement about these two counties. As we have provided a separate mode of having courts in those counties, there should be some regulation in regard to the prothonotary

and the clerks. I could not vote to appoint a prothonotary in Philadelphia and elect him in the other parts of the State and I think our Constitution should be uniform in its bearings and character and homogeneous in all respects.

Mr. BIDDLE. Mr. Chairman: As far as I understand this debate, there are two chief objections made to section seven of the article reported by the Committee on the Judiciary, by which the judges of our courts are to be allowed to appoint their own clerks and prothonotaries. I propose to say a word or two as to each of them.

It is said, first that it mars the symmetry and uniformity of the system, by allowing judges in this county to appoint the prothonotary, it being understood that in all the other counties of the State, that officer is to be elected. I am very sorry for it, if that is so, because I think it is a mistake. I think that judges everywhere should do what every man in business considers absolutely essential to the proper discharge of the details of his business, that is to appoint his own book-keeper; but if gentlemen in other parts of the State prefer the system which was adopted some thirty years ago, be it so. It is not for me, it is not for us in Philadelphia, to quarrel over it. We yield cheerfully. Is that a reason, however, when we know and feel every day as we do, as every member from this city has said who has risen to speak on the question, that the present system is fraught with unmitigated evils, that we should have it continued upon us?

Why just look at it! With the prothonotary holding his title from precisely the same authority from which the judge receives his, how can there be that just subordination that ought to exist between the two? The courts of Philadelphia have but one object in view in regard to this matter and that is to see their business, the public business which is their business, properly discharged. As it is now, no matter what the orders or decrees that they direct to be entered they are practically powerless to see them properly transcribed. When I say that I apply it to all the details of the prothonotary's office. You take from the judges by preventing their appointment of these officers, which carries with it the power of removal, the power of a just supervision over their acts. It is a gross anomaly in the discharge of any business that this thing should exist. It is not patronage at all. It is an entire mistake to look

upon this as patronage. I go as far as any one, and at the proper time I will so show by my votes, to lop off from the judges everything that does not strictly pertain to the discharge of judicial duty. I do not want to see them appointing any commissioners, no matter how valuable their appointments may be supposed to be; nor do I want them to exercise the patronage in the occasional appointment of officers to discharge a portion of their judicial functions.

Mr. D. W. PATTERSON. Will the gentleman from Philadelphia allow me to ask him a question?

Mr. BIDDLE. Certainly.

Mr. D. W. PATTERSON. I ask the gentleman from Philadelphia whether a clerk is not an officer of the court and in every court of record indispensable, and whether the judge cannot fine and punish him for misconduct?

Mr. BIDDLE. I will endeavor to answer the gentleman. He ought to be an officer of the court. He practically is no such thing. He holds by a title entirely independent of the court and he defies the court when the court interferes properly to compel him to do his duty, by telling the court that he derives his authority from the same source that the court does. There is no power like the power of instant removal in case of disobedience to proper orders. If you take away that check, it is in vain to talk, as I have heard my friend from Dauphin talk, of the power of suspending for cause, or of indictment. How are you to meet a case like this? A man may do a great many things to the deterioration of the public service when he is not actually a criminal. Suppose he is a lazy, neglectful, inefficient, worthless officer. These are all crimes when they exist in connection with the public service, but it is very hard to lay your hand upon any particular instance which would entitle the court to interfere in the way in which it is suggested they should interfere; and yet the sum total of inefficiency is so gross as to produce practical derangement in the machinery of the office. I want to see that prevented, and I am very sorry, as I said when I began, that this system should be applicable to the whole Commonwealth, but I cannot help it.

I was on the question of patronage, however. It is not patronage at all to appoint the man who is to discharge the functions of writing down the order of the court. It is a necessary step in the administration

of justice. You must have somebody to do it, and the question is, is he to be best controlled by receiving his appointment at the hands of the party who should have the supervision of his conduct? Is it by going through the formality, I was going to say the farce of indictment and trial? You will never reach the end in that way at all. You want instant relief, and you only get instant relief by constantly holding this check of removal over the officer.

Let me illustrate this. It is the true way to look at it by instances from the conduct of business in private life. A man's cashier, or his foreman, or his bookkeeper, does not attend to his business as he ought. Was it ever dreamed of that he was to be formally arraigned, tried, and convicted? Not at all. You say to him "I am tired of this constant inefficiency; I cannot precisely say that you have been criminal; you come down one day an hour after the time you ought to come, you go away an hour before the time you ought to leave;"—and in the case of some of our prothonotaries I believe they neither come nor go; they are never there at all;—"I want this thing to stop; if it happens again I will dismiss you." That is the way to get rid of a worthless servant. Why should not the same rule apply to public servants?

Mr. Chairman and gentlemen, it is the curse of our system that this sort of thing is tolerated under the spurious, specious notion of giving the people the right to elect these officers. It is an entire mistake. Give the people the largest right to elect their representative officers, but do not ask them to do that which they are unable to do, namely, to ascertain in advance the qualifications of these and similar officers. It is impossible for the people, supposing each one endowed with supreme intelligence and virtue, to ascertain in advance the qualifications of these book-keepers, these cashiers, these foremen. They have no power to do it; and it is no derogation from the rights of the people to tell them so. They ought to be told so when the truth is really so.

Now in regard to some of the details of this section, I agree with the gentleman from Butler (Mr. J. N. Purviance) that we ought to have a uniformity of tenure. I care nothing for the six years. If it is to be three years for the prothonotaries of other counties, let it be three years for the prothonotary of Philadelphia county. I find no fault with that. Let their salaries

be fixed just as you fix the salaries of prothonotaries in other counties of the State, by law. I would not ask the judges to do it. I should vote against that. I would not ask that the councils of the city should do it. I would vote against that. I would not ask that their salaries should be graded with the salaries of the judges. I should vote against that; but that is a matter of detail. I am in perfect accord with the gentleman, who spoke well on that point. I agree with him, and if you choose, as seems to be the sentiment of this House, to elect in other parts of the State, if you have found these disadvantages not weighing on you as I tell you they weigh every hour of the day upon us here, allow our judges to appoint.

Reference has been made to the Supreme Court of the State, which we knew ever since 1838, when the power was taken from the Governor, has appointed its own prothonotaries. I say unhesitatingly—here I speak of the Eastern district, not of the Middle and the Western districts, for I know but little about them, although what I do know of the Middle district is favorable; I have practiced occasionally there—I say that the prothonotary's office of the Eastern district is better managed, in the main vastly better, than the offices of the prothonotaries who are elected by the body of the people. I say that this prothonotary's office exhibits a very favorable contrast, and when you go there and find anything that is not as it ought to be done, you have merely to make the appeal, and it is listened to; the evil is corrected.

I do trust therefore that if this advantage, as I deem it to be, is to be denied to the rest of the State, it will be allowed to exist here notwithstanding it may not be in entire uniformity with the subject in other parts of the State. We know what we want here because we all feel the evils of the existing system in so large a degree that there is scarcely a voter in Philadelphia that would not hail this change with rejoicing.

Mr. ARMSTRONG. Mr. Chairman: By the census of 1870 the population of the State was three million five hundred and twenty-one thousand. I presume it would be safe to say that the population of the State at the present time approximates closely to four millions. The population of the city of Philadelphia is probably one-fifth of the entire population of the State. In providing a different rule for the city of Philadelphia we sim-

ply recognize the inevitable necessities which attach themselves to large concentrated populations. This is recognized in the legislation of the State. It has been repeatedly recognized in the suggestions which have been made to this Convention; and as practical men seeking to promote the best interests of the people at large, it would seem to me to be a dereliction of duty if we should carry the idea of mere uniformity so far as to work a positive injury to any large class of the community.

In Philadelphia the condition of the clerkships of the several courts is anomalous and is entirely different from that which appertains to the same duties in any of the counties of the State. The evils complained of are incident to the vast concentrated population of great cities. Why should this Convention close its eyes to the uniform testimony of the able and distinguished gentlemen experienced in the profession and in the working of the courts in their exposition of the evils under which they suffer?

Is it not true, as has been stated without contradiction upon this floor, that the prothonotaries of their courts delegate their functions to inferior and subordinate agents and are themselves not diligent, if I may not add entirely derelict in their duties, often. It is stated that they are habitually absent from their office and negligent in the discharge of their duties. Is it not notoriously true, that these of the city are imposing upon suitors by levying illegal fees to an extent which is an outrage upon the administration of justice and calls as loudly for correction as any other particular abuse submitted to the judgment of the Convention? These facts have been openly stated without contradiction, and the conviction is forced upon the Convention the statement is true—and if true is it in the judgment of any man a sufficient answer to say that these guilty men may be indicted for misdemeanor in office? Practically they cannot be either prosecuted or convicted. The sum which is levied from any particular person is too small to justify the necessary vexation and expense incident to such a prosecution, and there are few men willing to subject themselves to the trouble and annoyance which must be encountered in such a contest with the powerful rings which are interested to maintain existing abuses.

This evil ought to be recognized and ought to be remedied, and the remedy consists in subjecting the prothonotaries

to the close supervision of the courts whose servants and agents they are. If such evils extended to the country, I would unhesitatingly favor the appointment of the prothonotaries in all the districts by the judges as an efficient mode of correcting them; but they do not. How soon they may reach the country, I shall not undertake to say; but the distinction is at present a wide one and one which we ought not to overlook. In the country we do not suffer from these evils; in the city they do. Shall we force upon them a system which is applicable and well adapted and works advantageously with us, but which they tell us by all their experience, is disadvantageous and injurious to them?

I see no reason for refusing to recognize this distinction. The evil does exist and it embraces within its grasp one-fifth of the entire population of the State. They come to this Convention with an unusual degree of unanimity and ask relief. It is no answer to say that this is a matter within the control of the Legislature. The corrupt influences which make the evil intolerable at home are able to prevent the legislation which would correct it.

These facts are patent. Why shall we not allow one-fifth of the people of this State to adapt the workings of their courts in their practical operation to their own conception of their necessities? I can see no objection to it. I do not see why it would not be highly advantageous, and why it is not an absolute and paramount necessity of their condition.

The gentleman from Luzerne has suggested that the section would appoint a new officer. I think he does not attach much importance to his suggestion. There is one general prothonotary provided for all the courts, for the reason that it is to be one uniform court for certain purposes, but it is divided into separate, distinct jurisdictions, and each of those jurisdictions must have its own prothonotary. We call him clerk simply for convenience and to avoid confusion in the use of terms, but he is at last a mere prothonotary and he may be so called if the Convention so prefers; I have no objection to that; but we must look at the substance of the thing itself and not at the mere matter of its detail which will be fully and appropriately adopted.

I concur fully with the remark of the gentleman from Philadelphia (Mr. Bidle) in respect to the question of details.

If this section needs amendment, to reduce the term from six years to three in order conform it to the usage of the State, I have not the least objection; I think it would be well to let the compensation be regulated by law as proposed in the section. But all these things are mere matters of detail which will be properly adjusted. The fundamental question which is before the Convention now is, ought we to concede to the people of Philadelphia—as I have stated so large a proportion of the entire population of the State—the right to organize the subordinate agencies of their judicial administration in the manner which seems best to them in the light of their experience? I see no harm that can come to the State. It does not at all disturb the general harmony of judicial administration. If it touched the organization of the courts in which we might all have a common interest as citizens of the Commonwealth, I should be opposed to it, because one of the things which I earnestly desire and advocate on the floor is that the uniformity of the judicial system of the State shall be as complete as possible; but the appointment of clerks or prothonotaries, by whatever name they may be called, is not a part of the judicial system any further than that it is the necessary clerkship, the mere recording agency of the courts for preserving its records—its judgments, orders and decrees.

Mr. H. W. PALMER. I desire to inquire of the gentleman whether the courts now have not a perfect right to inspect the records and require them to be kept in accordance with law, with authority to enforce their orders by attachment for contempt, and whether they can have any more power if they appoint the prothonotaries?

Mr. ARMSTRONG. I have no doubt that they have all the power which the gentleman has indicated; but it is a power which, however it may be exercised, does not so effectually reach the evil as the power in the courts to appoint and remove their officers would do. It is to prevent inefficiency, neglect of duty; it is to prevent the levying of illegal fees and other offences in office; great and small misdemeanors in office are of course punishable by law, but there are many derelictions and oppressions which do not rise to the grade of misdemeanors. But if they do, they are practically beyond the power of correction by indictment. Difficulties innumerable, at every step, would em-

barrass, if not effectually arrest such proceedings. The judgment of every man in this house can scarcely fail to be convinced that the evils so well portrayed by the gentlemen from Philadelphia who have spoken upon the question, is one of great enormity, requiring correction by some means wholly beyond the reach of corrupting influences.

Mr. EWING. Allow me to ask a question?

Mr. ARMSTRONG. Certainly.

Mr. EWING. Does not the gentleman know that the rule rather than the exception in the United States courts throughout the entire country is that illegal fees are charged by the clerks appointed by the courts?

Mr. ARMSTRONG. The gentleman is from a large city in the western part of the State; he doubtless speaks from his experience, of which I know nothing, but if it be true, it only illustrates forcibly the evils which are incident to all judicial administration in large and highly concentrated populations, and shows how expedient it is that we distinguish between rural and city courts in this regard.

Mr. EWING. No, sir, I speak from what I have heard said, in certainly a dozen States in the Union running through a period of fifteen or twenty years.

Mr. ARMSTRONG. It does not in the least change what I was saying, because those courts are usually located in large cities. So far as the United States courts at Williamsport is concerned, of which I do undertake to speak, I will say that within my knowledge I have never heard it even suggested that illegal fees were collected in that clerk's office. It is not so practicable in small populations. Evils of that kind do not grow up in sparse communities, but they do grow and thrive with a vigor which would astonish honest men the world over in the great centres of populations everywhere. This section is limited to the city of Philadelphia, to a large concentrated population, and the people demand it.

One word only as to the apprehensions that gentlemen suggest as to the adoption of our Constitution. I venture to say that if this Convention is not able to devise a Constitution which will encounter the hostility of the dishonest, fraudulent corrupt rings of both political parties, it will not be worth adopting. If we submit a Constitution which commends itself to the better judgment of the good, the honest, the men of integrity throughout the State,

it will be adopted. I have more faith in the integrity of the people than to believe that a good Constitution, well-devised and submitted to the earnest judgment of men of integrity throughout the State will go down under the force of any corrupt political combinations whatever. I attach no importance to that argument.

I will not detain the committee further. I trust that in deference to the almost unanimous wish of the bar of Philadelphia, this section will be allowed to remain substantially as it is.

**THE CHAIRMAN.** The question is on the amendment of the gentleman from Lancaster (Mr. D. W. Patterson.)

**MR. SRUTHERS.** It appears to me that there is a great deal of force in the arguments that have been adduced on both sides in the discussion of this question. I think it would be very unwise to place the appointment of the prothonotaries in the hands of the courts or to take it away from the people. On the other hand, I believe it is very necessary and important that the courts should have a control over the prothonotaries to a certain extent. With a view of meeting that difficulty, I desire to propose an amendment to the amendment, which will allow the people to elect the prothonotaries and chief clerks and at the same time bring them under the supervision of the courts, so far as that a majority of the judges of the courts may remove them for cause, when it becomes apparent that they are inefficient, dishonest, or otherwise not performing their duties properly.

**THE CHAIRMAN.** An amendment to an amendment is pending. The chair will remind the committee, that while there is no positive rule on the subject, a parliamentary courtesy obtains that when an amendment has been offered or a section is under consideration, the chairman of the committee having charge of the particular subject has properly the conclusion of the debate. He merely submits that parliamentary courtesy to the consideration of the committee.

**MR. SRUTHERS.** I was not aware that there was an amendment to an amendment pending.

**THE CHAIRMAN.** There is.

**MR. J. R. READ.** Do I understand that the amendment to the amendment is the motion of the gentleman from Lancaster (Mr. D. W. Patterson)?

**THE CHAIRMAN.** The chair will remark, for the information of the committee, that when this section was under consid-

eration last evening, the gentleman from Allegheny (Mr. D. N. White) offered an amendment to insert certain words. Then the delegate from Lancaster (Mr. D. W. Patterson) moved to strike out certain words, which included the amendment offered by the delegate from Allegheny; and that is the question before the committee at this time.

The amendment to the amendment was rejected; there being on a division, ayes twenty-four; less than a majority of a quorum.

**THE CHAIRMAN.** The question recurs on the amendment offered by the delegate from Allegheny (Mr. D. N. White.)

**MR. SRUTHERS.** I now offer the following amendment to the amendment: Strike out all after the word "be" in the second line of the section and insert: "elected for the term of six years and subject to removal by a majority of the judges of said courts, and one chief clerk for each of said courts to be elected for the term of six years, subject to removal in like manner by a majority of said judges. The said prothonotary and chief clerks respectively shall appoint such subordinate clerks as may be necessary, under the approval of the judges of said courts. The said prothonotary and clerks shall receive salaries to be fixed 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 said prothonotary into the city treasury, and those due to the Commonwealth into the State treasury; and such prothonotary and chief clerks shall give such bond, with approved securities, for the faithful performance of their respective duties and just accounting for the fees collected by them as may be provided by law. Each court shall have its separate dockets, except the judgment dockets, which shall contain the judgments and liens of all said courts."

**THE CHAIRMAN.** The question is on the amendment of the delegate from Warren (Mr. Struthers) to the amendment of the delegate from Allegheny (Mr. D. N. White.)

The amendment to the amendment was rejected.

**MR. D. N. WHITE.** I will withdraw the amendment that I offered, and in lieu of it I move to strike out all of the section after the word "Philadelphia" in the first line down to and including the words "city treasury" in the twelfth line, and to insert the following: "And for the county



of Allegheny there shall be one prothonotary's office and one prothonotary in each and all of said courts, to hold office for the term of six years. The said prothonotaries shall respectively appoint a chief clerk for each court and such assistants as may be necessary, subject to the approval of a majority of said judges; and the said prothonotaries and chief clerks shall receive fixed salaries to be determined by law, which shall never be as high as the salaries of the said judges, and their assistants shall receive such fixed salaries as shall be determined by a majority of said judges which shall be less than the salary of said chief clerk. Said salaries shall be paid by said city and said county; and all fees collected, except such as may be by law due the Commonwealth, shall be paid by said officers into the treasuries of said city and county respectively."

The amendment was rejected.

MR. FUNCK. I offer the following amendment, to come in after the word "courts" in the second line:

"All the prothonotaries of the several courts of this Commonwealth shall be appointed by the judges of said courts respectively. They shall not be related by blood or marriage to any of said judges, and shall hold their office for the term of six years, subject to removal by the law judge of any of said courts, or a majority of them where more than one judge learned in the law may preside over said court. They shall have the power to appoint all their subordinates, and shall receive a fixed salary, to be determined by law, which shall be paid to them quarterly out of the city or county treasury. All the fees collected in said offices respectively, except such as may be due to the Commonwealth, shall be paid monthly into the city or county treasury. In the city of Philadelphia each court shall have its separate dockets, except the judgment docket which shall contain the judgments and liens of all the said courts. Before entering upon the duties of said office, such prothonotaries shall enter into bonds in such amount as may be determined by law, with sureties to be approved by said courts, for the faithful performance of the duties of their respective offices; and this provision shall not go into effect until the expiration of the terms of the several prothonotaries now in office."

The object of this amendment is to make all the prothonotaries of the several

courts of common pleas of this Commonwealth appointed. They are, properly speaking, officers of the court; and there can be no reason that I can see why the judges of the court of common pleas of the city of Philadelphia should have the authority to appoint their prothonotary, and the judges of the courts of common pleas of other counties should not have it

This office is an important one. The people are interested in having it filled by honest and competent men. As at present constituted, it is a foot-ball of politicians. I desire that the present condition of things should be remedied in that respect. If we secure the services of an officer for the term of six years who shall be appointed by the judges of the court, he will unquestionably be competent to discharge the duties of the office. All papers that will go into his hands will be properly labelled and stored away in pigeon-holes, where they can be found afterwards by the profession if they have any occasion to use them; the records of the court will be written in a legible hand; the judgments will be properly indexed; and there will be a marked improvement in the manner in which this office will be kept if this system is adopted.

I do not apprehend that there will be any opposition on the part of the people of the rural districts to the change of this system in this way. The people are not all politicians. Nine out of ten have honest vocations which they follow and make an honest livelihood in that way. If they see that a change is to be made for the better, they will hail it with gratification.

My amendment is a substitute for this whole section, and you will perceive that I impose upon the chief clerk the responsibility of appointing all his subordinates. He has the administration of that office, and the responsibility should rest upon him to see that the duties are faithfully performed. The original section imposes the duty of appointing the subordinate clerks upon the court. I desire to relieve the court from that duty. It looks too much as if the court was acting the part of prothonotary also and assuming the management of that office; whereas, in truth and in fact, the court ought to be required to do nothing more than simply appoint the chief officer, and then it should be his duty to see that all his subordinates were competent men and performed their duties faithfully; and if he was guilty of any dereliction in this respect all that would be necessary would be to call the

attention of the court to the fact and the court would hold the chief responsible and if he did not remove the incompetent subordinate, the court would have its remedy by removing the principal officer.

Then if the salary is fixed by law, the system of extortion which has been going on all over the Commonwealth—for it is not confined entirely to Philadelphia—will be removed; the officer will no longer find any inducement to extort from the people when the benefits of that extortion will not go into his own pocket. This system then will secure an honest administration of the office and will guarantee to the people that they shall be charged no more for the service that is done for them in that office than the law provides.

Again, this officer ought to be paid quarterly. He ought not to be required to wait until the end of the year before he can get his salary. The time ought to be fixed and I have fixed it quarterly. Then he will receive out of the county treasury or out of the city treasury such an amount of money as may be coming to him according to the salary which will be fixed by law and out of that he will pay his subordinates. Then at the end of every month he ought to make a return to the city or county treasury of the amount of fees which have been received by him during that month and pay them over into the treasury, and he ought also to be required to give security for the faithful performance of the duties of his office. In the city of Philadelphia the amount of money which he receives is large, and of course the amount of security would be much larger than in the rural districts. I think the section as offered by me embodies a complete system in itself and I trust it will commend itself to the favorable consideration of the committee.

Mr. CAMPBELL. Mr. Chairman: I think the amendment offered by the gentleman from Lebanon is entirely too long and therefore unnecessary. I had intended myself to offer an amendment in this shape: after the word "necessary" in the eighth line to insert—

*"Provided, That no person connected by blood or marriage with any of the judges of said courts shall be appointed prothonotary, chief clerk, or to any office under the same."*

My object in preparing the amendment was to prevent a system of nepotism or appointment of relatives by judges that would tend to bring the judiciary into disrepute and cause clamor and com-

plaint on the part of the bar and of the people. There is an act of Assembly of this State, in reference to the appointment of auditors by the courts. That act of Assembly was passed, as I have been informed by persons who were practicing at the bar at the time, in consequence of the judges of the courts appointing their relatives and persons connected with them by marriage, as auditors. The act which was passed on the twenty-fourth of January, 1840, is as follows:

*"It shall not be lawful for the judges of the several courts of this Commonwealth, or any one of the said judges, to appoint as auditor, master in chancery, examiner, commissioner, or appraiser, any person related or connected with said judges, or any one or more of them, by ties of consanguinity or marriage."*

That act was found necessary to prevent the very evil of appointing relatives that we shall fall into if we pass this section as it stands now, without an amendment of the kind that is proposed. If we wish to preserve the judiciary from taint or suspicion, we had better incorporate into the section a provision prohibiting the appointment of relatives of the judges, as clerks or officers of the court. If the amendment of the gentleman from Lebanon is voted down, a short proviso, such as I have drawn, should be inserted into the section, and I shall accordingly offer the one that I have just read.

Mr. J. M. WETHERILL. I offer the following as a substitute for the whole section—

The CHAIRMAN. As a substitute for the amendment offered by the gentleman from Lebanon?

Mr. J. M. WETHERILL. As a substitute for the section as amended.

The CHAIRMAN. The Chair will inform the delegate that the section has not yet been amended.

Mr. J. M. WETHERILL. Then I withdraw my proposition for the present.

The CHAIRMAN. The question is on the amendment of the delegate from Lebanon (Mr. Funck.)

The amendment was rejected.

Mr. CAMPBELL. I now offer the following amendment to come in after the words heretofore inserted following "necessary" in the eighth line:

*"Provided, That no person connected by blood or marriage with any of the judges of said courts shall be appointed prothonotary, chief clerk, or to any office under the same."*

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia.

The amendment was rejected.

Mr. J. M. WETHERILL. I offer the following as a substitute for the whole section :

"In every county of the Commonwealth there shall be one prothonotary's office and one prothonotary for all the courts thereof, and to every court there shall be one chief clerk.

"The prothonotary shall be appointed by the judges of the judicial district in which the county is located, and the chief clerks by the judges of the respective courts. They shall hold their offices for the term of six years, subject to removal by the judges of the court by whom they were appointed.

"The prothonotary and chief clerk shall appoint such assistants as may be necessary. The salaries of the said officers shall be fixed by law, and shall be paid out of the revenues of the respective counties; 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 county treasury. Each court shall have its separate dockets, except the judgment docket, which shall contain the judgments and liens of all the said courts as are or may be directed by law."

I desire to say but one word on this subject. This is merely applying the provisions of this section, with necessary alterations in phraseology, to all the counties of the Commonwealth. It has been deemed advisable by myself and several other members of the Convention that at least the proposition should receive the vote of the Convention. If the present system is productive of evil in the cities, it is also productive of evil to a certain extent, not probably to as great an extent, in the other judicial districts of the State; and it seems to me desirable that a remedy should be provided in this city and also in the remainder of the State. Descending to provisions for the appointment of clerks for the different courts in the Constitution, seems to be a matter which may well be left to the regulation of the Legislature by law; but if it is deemed advisable for the city, I desire also that provision shall be made for the country.

The CHAIRMAN. The question is on the amendment of the delegate from Schuylkill (Mr. J. M. Wetherill.)

The amendment was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. ALBRICKS. I wish a vote on the question whether the officers shall be elected or whether they shall be appointed by the courts; and with that view I offer the following amendment: Strike out the words "appointed by such courts" and insert "elected by the qualified voters of said city."

The amendment was rejected, there being on a division ayes thirty-six, noes forty.

Mr. HANNA. I move to strike out the word "six" in the third line and insert "three" so as to make the term three years.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia (Mr. HANNA.)

The amendment was agreed to.

Mr. CASSIDY. I desire to ascertain from the chairman of the committee exactly what they propose when they say "the said prothonotary and the said chief clerks" shall appoint assistants. Do they mean that they shall have jointly the appointment of assistants; and if so, why? I should like to know what the reason was which induced the division of the responsibility on the subject of the appointment of assistant clerks.

Mr. ARMSTRONG. The provision is, "the said prothonotary and the said chief clerks respectively." The section contemplates that the prothonotary will have certain clerks necessarily which he must appoint, and that the chief clerks will have assistants under them which they will appoint; and it was supposed that the phraseology was sufficiently explicit that the prothonotary and the chief clerk respectively shall appoint their assistants. That was the purpose of it. The prothonotary appoints his assistants and the chief clerk his.

Mr. CASSIDY. It seems to me, however, with due respect to the chairman, that the responsibility should be put upon one person. He will be appointed by the judges as we have already agreed, and then I would hold him responsible for all the subordinate officers in his office. By this arrangement you divide the responsibility. I do not care particularly about it beyond making the suggestion.

Mr. ARMSTRONG. In reply I will suggest that the prothonotary is the officer who is charged with the general super-

vision of all the courts, and of course he should have such assistants as he desires; but as the courts have each original and distinct jurisdiction the clerkship of each court ought to be independent and not dependent upon the chief prothonotary who has supervision of the whole of the courts. It is for the purpose of making the responsibility specific in each particular court.

Mr. MACCONNELL. I should like to ask the chairman of the Committee on the Judiciary a question. This provision is that the prothonotary may appoint his assistants and the chief clerks their assistants. What I want to ask is, what are to be the duties and responsibilities of the prothonotary and what are to be the duties and responsibilities of the chief clerk? Where is the division that lies between these several responsibilities?

Mr. ARMSTRONG. The line would be drawn between the duties of general supervision and the particular duties which would appertain to the specific court. It was not deemed proper by the committee to introduce any scheme of legislation into the section, that should be properly left to the consideration of the Legislature.

Mr. CASSIDY. I am not satisfied, and therefore I move to strike out the words "chief clerk" and to make the section conform to my idea of making the prothonotary the sole appointing power for all clerks in his office because as it is now—

Mr. BARTHOLOMEW. Allow me to suggest also to strike out the word "respectively" in the seventh line.

Mr. CASSIDY. Yes, my purpose is to strike out the words "chief clerk" so that "the said prothonotary shall appoint such assistants as may be necessary." I move to strike out in the fourth line after the word "judges" the words "and one chief clerk for each of said courts to be appointed by said courts," and then it will go on "said prothonotary shall appoint such assistants as may be necessary, and the prothonotary and his assistants shall receive fixed salaries" and so on.

The CHAIRMAN. The amendment will be read.

The CLERK. It is moved to strike out all after the word "judges" in the fourth line to and including the word "court" in the sixth line; and to strike out the words "and the said chief clerks respectively" in the sixth and seventh lines, so as to make the section read:

"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 three years subject to removal by a majority of the said judges. The said prothonotary shall 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," &c.

Mr. ARMSTRONG. That would strike out I think one of the very essentially important provisions of the section which subjects the prothonotary to the supervision of the court. It would strike out "and to hold office for six years," now changed to three years," "subject to removal by said court."

Mr. CASSIDY. No, I do not propose to strike that out.

Mr. ARMSTRONG. Then I did not hear it correctly.

Mr. CASSIDY. I mean to leave him subject to the power of the court.

Mr. ARMSTRONG. Will the Clerk please read the amendment?

The CLERK again read the amendment.

Mr. ARMSTRONG. That does strike out the words "subject to removal by said court."

Mr. CASSIDY. No. These words are in just before. I will say to the chairman that I do not desire to make any such alteration. He may put it in any shape he thinks proper.

Mr. ARMSTRONG. The clause is embodied in the former part of the phraseology; but I was going to call the attention of the committee to the objection to the amendment. The committee will observe that beginning in the twelfth line the section provides:

"Each court shall have its separate dockets except the judgment docket, which shall contain the judgments and liens of all the said courts."

These dockets will be under the charge and direction and supervision of the prothonotary of all the courts, and those dockets appertain to all the courts, and are therefore properly placed under the supervision of all the judges; but as the jurisdiction of the separate courts is entirely distinct, it was the view of the committee that each court should have the right to control its separate docket and should therefore appoint its own clerk. To allow the prothonotary to appoint these clerks would be to introduce into the administration a separate and distinct jurisdiction. Whilst

the prothonotary would have no duties to perform in the separate courts, he would have the right to appoint the persons who should perform the duties.

Mr. HANNA. Allow me to ask whether the gentleman means by the term "chief clerk" anything more than a court clerk?

Mr. ARMSTRONG. Certainly not. I mean only by that a prothonotary appointed by the court of separate jurisdiction; that is all. The word "prothonotary" is used only to avoid confusion in the choice of terms.

Mr. HAY. I wish to ask the gentleman from Lycoming a question. I ask whether the courts had the appointment of the prothonotaries, they would not practically have the control of the subordinate employees of the prothonotary in their respective courts; and if the object is not sufficiently accomplished by giving them the appointment of the prothonotary?

Mr. ARMSTRONG. They would have, I have no doubt; but whether it would be as complete and effectual a supervision as would be attained by the plan proposed of having each court entirely distinct, does not seem to me clear. I think the supervision of the court would be more perfect, it would bring it more directly under the control of the court if the section is retained as the committee have reported it.

Mr. NILES. I move that the committee rise, report progress, and ask leave to sit again. ["No."]

Mr. H. W. SMITH. I move to amend, "report no progress" and ask leave to sit again. [Laughter.]

The CHAIRMAN. The amendment is not in order. The question is on the motion of the gentleman from Tioga (Mr. Niles.)

The motion was not agreed to; there being on a division, ayes thirty-two; not a majority of a quorum.

The CHAIRMAN. The question is on the amendment of the delegate from Philadelphia (Mr. Cassidy.)

The amendment was agreed to, there being on a division—ayes fifty-four, noes fifteen.

The CHAIRMAN. The question recurs on the section.

Mr. J. R. READ. I move to strike out the words "and the said prothonotary and chief clerks and their," and insert "and he and his assistants shall receive fixed salaries," &c., to make it read better with the amendment first adopted.

The amendment was agreed to.

Mr. FUNCK. I offer the following amendment to come in after the word "courts" in the second line:

"The prothonotaries of the several courts of this Commonwealth shall be appointed by the judges of said courts respectively, and shall receive salaries fixed by law. The Legislature shall make provision to carry this section into effect."

The amendment was rejected.

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

Mr. DARLINGTON. I ask that the question be divided ending with the word "treasury" in the twelfth line.

The CHAIRMAN. The section is susceptible of division in that way. The question is on the first division of the section.

The first division of the section was agreed to, there being on a division, ayes fifty-three, noes fourteen.

The CHAIRMAN. The question now is on the next division.

The CLERK read the division as follows:

"Each court shall have its separate dockets, except the judgment docket, which shall contain the judgments and liens of all the said courts as are or may be directed by law."

Mr. DARLINGTON. I now ask the chairman of the committee how he proposes to dispose of the judgment docket? In whose custody is it to be? In which court is it to be found?

Mr. ARMSTRONG. In the prothonotary's custody, of course.

Mr. TURRELL. Mr. Chairman: It occurs to me that there is a difficulty here which I wish to call the attention of the chairman and members of the committee to. It is evident that we are going to adopt this section; but there is nothing in it which gives any security for the discharge of the duties of this office. There is nothing which requires the officer to pay fees into the treasury or to enforce it, and you will find a very different state of things in relation to the collection of fees than you do where the officer is collecting for himself. I desire to call the attention of the chairman and members of the committee to that circumstance.

Mr. ARMSTRONG. I will say to the gentleman that in the view of the committee that was so entirely appropriate to the province of the Legislature, that it was not thought well to encumber the Constitution with it. It is highly impor-

tant that a proper provision should be made on that subject, but it should be done by law and not by the Constitution.

Mr. TURRELL. Then, with all due deference to the chairman, it should be left to apply equally to all the prothonotaries. There is a provision reported and on first reading which requires the prothonotaries of counties to perform this duty.

Mr. ARMSTRONG. I would suggest to the gentleman that in the report of the Committee on County Officers he can provide for that if he deems it proper.

Mr. TURRELL. I suggest whether the appointment here does not so change the nature of the office that the provision in that report will not apply.

Mr. ARMSTRONG. Prothonotaries are county officers according to the report of the Committee on County, Township and Borough Officers.

Mr. BUCKALEW. I wish the chairman of the committee would make another explanation to go out with our proceedings; and that is that it is the general understanding among the members that we voted down the amendment of the member from Philadelphia (Mr. Campbell) with the idea that the Legislature will incorporate into a statute passed under this Constitution a provision that no person connected with a judge of the courts by blood or marriage, shall be appointed to any of these offices. It is only omitted, as I understand now, because we do not wish to put details into the Constitution.

Mr. ARMSTRONG. I have great pleasure in stating that my views concur with these just expressed. I understand that that amendment was voted down because it was not appropriate to the Constitution but it will be highly appropriate and proper for the Legislature to enact as a law.

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

The section was agreed to.

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

Mr. ARMSTRONG. Let the next section be read first.

Mr. NILES. I withdraw the motion for that purpose.

The CHAIRMAN. The next section will be read.

The CLERK read section eight, as follows:

SECTION 8. 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.

Mr. NILES. I renew my motion 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. HEMPHILL. I move that we take a recess.

The motion was agreed to; and (at one o'clock and eight 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. HAY. 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 into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. When the committee of the whole rose this morning they had under consideration the eighth section, which was then read.

The section was agreed to.

The CHAIRMAN. The ninth section will be read.

Mr. WOODWARD. Mr. Chairman: Before that is read, I move to add a new section to what has already been adopted. The Clerk holds my proposition in his hand and I move to add what the Clerk will read.

The CHAIRMAN. The gentleman from Philadelphia proposes an additional section to be inserted after section eight, which additional section will be read.

The CLERK read as follows:

"In counties whose population shall exceed one hundred thousand, the Legislature shall establish courts of probate, to consist of one or more judges, who shall be learned in the law, elected 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.

"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 in 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."

MR. WOODWARD. Mr. Chairman: I do not know that I should have offered this amendment at this place and time but that I shall be obliged to leave the city to-morrow and shall not be able to be here again for some days to come, and this is the only opportunity I shall have to submit a proposition in reference to our judicial establishment.

All the other propositions I made were voted down, as every gentleman around me knows. I know of no reason why this should not be voted down as freely as they were, and I suppose it will be. I do not offer it with any view of having it adopted, but I offer it for the purpose of completing the record and placing myself at least upon the record as I wish to stand. It is a part of a series of judicial reforms which in my judgment would be useful to the people of Pennsylvania; and in that I may have been, probably was, mistaken. This is the last proposition that I have to offer, and I offer it with the view, as I said, of completing the record.

If any gentleman is disposed to entertain this proposition, I have to say that it is limited, as you see now, to counties containing 100,000 population. There are five such counties in Pennsylvania: Phil-

adelphia, Allegheny, Lancaster, Berks, Luzerne and the operation of the amendment would be limited to those five counties, unless some gentleman moves a smaller number, and if so it will be very acceptable to me, because I think that a very great improvement in our orphans' court proceeding would result out of this thing, and if any gentleman wants to include more counties I will cheerfully accept any such amendment.

But, sir, one purpose that I have in view is to introduce the experiment of separating the jurisdiction of the orphans' court in all testamentary matters from the other courts of record, and making them, as they always ought to have been, an entirely independent separate jurisdiction. Judge Duncan said in his day that the entire estates of the Commonwealth passed through the orphans' court in about thirty-three years. The estates of this Commonwealth have increased immensely since the days of Judge Duncan, and if every thirty-three years they do pass through the orphans' court, assuredly that court ought to be carefully constituted and its duties most carefully administered. To my certain knowledge, in Luzerne county, where I have lived most of my life, the records of the orphans' court are scarcely reliable. The business is loosely done, and it is impossible to trace a title that runs through the orphans' court, as all titles do more or less, with any satisfaction or assurance that you are correct. I suppose the same thing is true in other counties with which I am not so well acquainted. Certain it is that the courts of common pleas are greatly burdened by this jurisdiction, and it is one reason why the business is so much behind in some counties. We should relieve those courts by establishing courts of probate and we should take this important interest out of the tangle, the snarl in which it is involved by being connected with the civil jurisdiction of those courts and make it what it ought to be, an independent and respectable court.

These are considerations, Mr. Chairman, which I think belong to this subject. But, sir, there is another. In the city of Philadelphia the plunder of dead men's estates under the pretence of auditing them, has come to be a crying evil. I am one of those who think that a christian community are not more bound to bury their dead out of sight than they are bound to administer and protect the goods and the estate of the deceased. Widows

and children in the freshness of their grief are not very well calculated to maintain a battle with the cunning, shrewd, unprincipled sharpers that surround the dead man's estate, and the consequence is that those estates, under pretence of auditing and selling them, are plundered to an extent that I think must alarm any gentleman who will investigate the subject.

What is auditing in Philadelphia? An administration account is filed with the register of wills. I doubt if he ever looks into it. He advertises that he will present it to the orphans' court on a certain day. His fees, which are very large, legal and illegal, are assessed, and the thing is handed over to the orphans' court. The clerk of the orphans' court presents it, or gives notice that he will present it to the court. He does not look at it; the court does not look at it; but the court refers it to an auditor. That auditor then gives notice to parties of the time and place where it will be convenient to him to audit the account; and he spends more or less time on it, generally all the time he can, at a high rate of charge; and what does he do? He goes over the items. Possibly there is no dispute about any of them; no explanation is needed about any of them; but he goes over them one by one, and when he gets through, he gives notice to the parties to come and file their exceptions with him, if they have any to file. They file their exceptions with the auditor. He passes upon those exceptions. That re-opens the question again and gives him another job. He passes upon those exceptions and then returns his report and those exceptions to the orphans' court. If there are exceptions to his report, then, sir, for the first time the subject of this dead man's estate attracts the judicial eye, and then only to the extent to which those exceptions go. Through this whole process, which is a very expensive one, no judge, no clerk, no man of any competency has looked in to that account at all, but it is piled up with costs and charges to be paid by the widow and children out of the estate. In very many of these cases no auditing is needed at all; there is nothing to audit; but it makes no difference whether there is anything to audit or not, the process of auditing is carried on, and carried on largely.

This becomes a large and lucrative patronage in the hands of judges, and you will find judges having their favorites all around the bar and all around the com-

munity, to whom they will send this estate and that estate and the other, according to the affection they feel for their *proteges*. That is a job that they send to their most particular friends. Everything goes there, whether there is any occasion to audit it or not, and a slice is taken off the inheritance of the children to pay these officers and auditors; and this you call an orphans' court administration! Why, sir, the orphans' court has the least possible to do with the administration of an estate. I tell you that until somebody has excepted to the auditor's report, the orphans' court never thinks of it, nor hears of it, nor touches it, nor looks at it.

Mr. Chairman, this orphans' court was established originally in London and was one of the liberties of the people of that great city, and we brought it here because it was one of the privileges of London; but in the hands of these auditors, it has ceased to be what it originally was designed to be, a protection of orphans, and has become a sure mode of sacrificing their rights and their estates.

My amendment proposes to establish a court of probate whose business it shall be to audit estates and settle them. It is the business of the court, not to appoint cousins and relatives and favorites, but to do it themselves. If you need more than one judge in Philadelphia, I would have two or three, as many as are necessary in that court, men of learning, lawyers, competent men. I would give them the appointment of a clerk. Let them appoint the most competent clerk they can find. Let them turn over to that clerk as much of their duty as they choose. Let him be a sort of standing auditor and the judge or judges themselves standing auditors; and let this auditing of the dead man's estate, if it must be audited, be done honestly and fairly, done kindly, done as you would bury his body, instead of making it the occasion of plundering his widow and orphans of that which he has left them. That is what I propose.

I have nothing more to say in regard to it. The amendment speaks for itself. It proposes a great reform where great abuses now exist. I have no feeling about it. I do not mean to die in Philadelphia if I can help it myself. [Laughter.]

Mr. HUNSICKER. I should like to ask the gentleman if he would be willing to reduce the number of population re-



quired, and make it, say eighty thousand, so as to include Montgomery?

Mr. WOODWARD. I have no objection to reducing the population required to any figure that any gentleman proposes.

Mr. HUNSICKER. We want such a court in our county.

Mr. WOODWARD. Let the gentleman move an amendment. I have no objection to any reduction.

Mr. HUNSICKER. Then I will move to amend the amendment by striking out "one hundred thousand" and inserting "fifty thousand."

The CHAIRMAN. The question is on the amendment of the delegate from Montgomery (Mr. Hunsicker) to the amendment of the delegate from Philadelphia (Mr. Woodward.)

Mr. J. N. PURVIANCE. Mr. Chairman: I intend to support the amendment of the gentleman from Philadelphia in so far as it becomes necessary that it should be incorporated as a part of the Constitution. The first section of the fifth article of the Constitution provides that the judicial power shall be vested in a Supreme Court, in courts of oyer and terminer and general jail delivery, common pleas, and such other courts as the Legislature may from time to time establish. Now I submit to the committee whether the amendment of the gentleman from Philadelphia is necessary at all; whether we have not precisely the same provision in the present Constitution. His amendments set out: "In counties whose population shall exceed one hundred thousand, the Legislature may establish courts of probate," &c. Now if he had used the term "shall"—

Mr. CORBETT. It is "shall" in the amendment now.

Mr. WOODWARD. The word "may" has been changed to "shall."

Mr. J. N. PURVIANCE. Then it is as I would like to have it, and I have nothing more to say on the section. It meets my views fully excepting in this: The present Constitution confers ample power upon the Legislature to do the very thing this amendment proposes, and it is therefore unnecessary that the Convention should adopt anything on the subject. If that court becomes necessary the Legislature will no doubt pass such a law as will give such a court. There is a portion of the amendment of the gentleman from Philadelphia that is necessary, and that is, so far as it goes to abolish the register's court. We must get that out of the pres-

ent Constitution in order, in lieu of it, to place therein the probate court.

Mr. CORBETT. Will the gentleman allow me to interrupt him?

Mr. J. N. PURVIANCE. Yes, sir.

Mr. CORBETT. By a preceding section we have limited the power of the Legislature to create any other courts than those created by this article of the Constitution, and the first section was passed prior to the time of the adoption of that limitation.

Mr. J. N. PURVIANCE. Then I would remark that this court should be a general court throughout the Commonwealth and we should preserve the principle of uniformity in our Constitution by not limiting it to numbers. A county containing a population of forty-five thousand would have no benefit from this system, and if it be as Judge Woodward says, a good system and should be established, then I see no reason why it should not be co-extensive with the State. Let it extend to every county whether of a population of five thousand or eight hundred thousand. If it be in order, I will move to strike out that portion of the amendment which imposes a limitation of population, and let it be a general provision for all the counties of the Commonwealth.

The CHAIRMAN. The gentleman is reminded that there is an amendment to an amendment now pending, and a further amendment will not be in order at this time.

Mr. ARMSTRONG. Mr. Chairman: The committee have had this matter under very careful consideration and the result of their deliberations will be found embodied in the twenty-second section on the ninth page of the report. I fully agree with the principles which the gentleman from Philadelphia has so well expressed. There is great necessity for correcting the abuses which have grown up around the orphans' court, particularly in large cities. For the convenience of the committee I will read the provision which the committee have suggested:

SECTION 22. 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 jurisdiction and powers to be exercised by the orphans' court of such county.

That brings up the entire question. The abuses in the city of Philadelphia are enormous and ought to be corrected. Measurably too they have been great in Allegheny county, as we have been informed; but I do not know, certainly it did not come to the knowledge of the committee, that any very great abuses had grown up in other counties of the State. In small counties there are no such abuses; and the duties of the orphans' court in such counties would be very limited indeed, by no means sufficient to engage the attention of a law judge; he would have almost literally nothing to do. As a part of the jurisdiction of the court of common pleas, it is in most of the counties of the State well vested now and the powers are complete. By the act of 1832 the system was regulated both as to the jurisdiction and powers of the orphans' court and of the register of wills. Now the office of register of wills is necessary, and yet the section offered as an amendment by the gentlemen from Philadelphia does propose to abolish that office. I do not see the necessity for that; on the contrary the probate of wills ought to be maintained as a distinct office in all the counties. In very small counties the offices of clerk of the orphans' court, register of wills, and prothonotary of the county are vested in the same person, and they exercise all these functions without confusion, and without danger, and without injury to any person and with full effect to all the judicial and proper purposes which such an office ought to subserve.

The difference then between the gentleman's amendment and the report of the committee is just this: He provides that in all counties exceeding one hundred thousand inhabitants the Legislature "shall"—it is imperative—organize such a court; in the report of the committee we provide that in all counties having more than one hundred thousand inhabitants the Legislature may do it. All the difference so far is that the amendment of the gentleman from Philadelphia would make it imperative and require the Leg-

islature absolutely to do it, whether other people desire it or not, whilst the report of the committee leaves it to the discretion of the Legislature. If the people desire it they will get it; if they do not, there is nothing compulsory which constrains the Legislature to create such a separate court.

Again, we abolish the register's court, and so does the proposed amendment of the gentleman from Philadelphia. The register's court, as all the lawyers here are aware, is now composed of the register and the judges of the court of common pleas. They sit together and form the register's court, and it is rather an absurdity generally; indeed I never saw a register's court in our county that amounted to anything, because the register is a mere cypher; he sits upon the bench beside the judges of the court of common pleas doing nothing but smirking and laughing a little and regarding it as a good joke himself.

We agree with the gentleman that the register's court ought to be abolished. We disagree in abolishing the register's office. We think the register's office should remain as it is. The gentleman proposes to abolish it. I have never heard in my experience any complaints made of the register's office nor any desire expressed to dispense with it; but I cannot speak for gentlemen in other counties. In large counties such as Philadelphia and Allegheny I very readily recognize the difference that grows out of their increased population; and the committee propose that in these counties they shall have a separate orphans' court. We call it orphans' court; the gentleman calls it probate court. The committee in that respect preferred the name of orphans' court because the whole State is accustomed to it; we know just what it means. If we institute a new court and call it probate court, if there were no difference whatever in its organization or in its powers and jurisdiction, it would be objectionable since it must necessarily lead to the education of the people in the use of a new term.

MR. J. N. PURVIANCE. Will the gentleman allow me to interrupt him? I the present orphans' court be abolished and a probate court established, what business would there be for the register of wills? The gentleman, as I understood, said the committee proposed to retain the register's court.

MR. ARMSTRONG. No, the gentleman misunderstood me. We abolish the reg-

ister's court. We have simply retained the register's office.

Mr. J. N. PURVIANCE. What will the register have to do?

Mr. ARMSTRONG. The register will simply be the custodian of the records of wills; he can receive the probate of wills and give certificates of wills.

In reply to the suggestion of the gentleman, I would say that wherever an orphans' court is established, the register's court is abolished by the terms of the report as proposed by the committee. There is no use in both courts, and we expressly provide that the powers and jurisdiction shall be vested in the new court, in the orphans' court to be thus established in the large cities. If it be thought that one hundred thousand is too large a limitation of the population, let it be reduced according to the judgment of the Convention. I am not tenacious in such a matter of detail. I believe that a county of less than one hundred thousand would not require it. As to the county of Montgomery the gentleman (Mr. Hunsicker) suggests that they would like to have it there. I should have no special objection to that; but one of the members of this Convention from Montgomery says they have hardly business enough for their judges now. The population is about eighty-one thousand, I believe.

I will further state that in consultation with the president judge of the court of common pleas of this county he stated to me very distinctly in conversation that even in the city of Philadelphia the mere proper duties of a judge of the orphans' court did not require the establishment of a separate orphans' court in Philadelphia because they can now do all their business with facility, with this exception that if they are required to do the auditing, then it ought to be established; and I entirely agree with that. I think the system of auditing is a mere system of wholesale robbery and it ought to be abolished. But we ought not to put too much of that kind of legislation in the Constitution. Let the Legislature do that. We ought not to define the limitations of its jurisdiction. Let us constitute the court, and then refer it to the Legislature that they may add power where it is required and withdraw powers when necessary. I would leave all matters of detail to the discretion of the Legislature.

In view of this, it would seem to me better that this amendment should not

prevail. As I have had occasion to remark several times in respect to amendments proposed by the gentleman, it proposes to cover matter which is already in the report of the committee, and as we believe carefully guarded and fully expressed, and there is no sufficient reason for introducing it here. It will come up in its order when we reach the twenty-second section, and if it requires amendment, when we reach it, let us do it there; but I think we ought not at this time to adopt this amendment and thus abolish not only the register's court but the register's office in every county of the Commonwealth with over one hundred thousand inhabitants. The gentleman states it would only apply to four counties. Let it be made seventy-five thousand, if you please; but let us come to it in its proper place and amend the section when we reach it according to what will make it accord fully with the judgment of the Convention.

Mr. DARLINGTON. Mr. Chairman: I entirely agree that there should be some plan adopted by which, if it be possible, we may get rid of what almost everybody out of Pennsylvania would be apt to consider as a complex system. I refer to having a register's office to which is given the probate of wills and the granting of letters of administration, and nothing else save indeed power to collect the collateral inheritance tax and receive the fees for it, and an orphans' court into which every account must go when filed in the register's office and undergo all the subsequent stages to which it may be necessary to subject it, and into which also you must go for the appointment of guardians of the minor children of the deceased, the sale of the estates of minors, the sale of the property of the decedent for the payment of debts, proceedings in partition for its distribution, proceedings for the recovery of legacies charged upon lands, and all other things pertaining thereto. I have thought for many years that it would be much better if we could so contrive it that in the same office should be found the records of wills and the administration, the appointment of guardians, and all those other things to which I refer; that we should have but one office and one court in which from the death of the decedent to the final settlement of his estate all the records might be found; but instead of this we have it in two courts. When the account is filed with the register it must be carried over to the orphans'

court for record there. In searching the records of titles you are necessarily driven to two offices instead of one. You look to one for the will or the letters of administration; you look to the other for the proceedings that have subsequently taken place in reference to the estate.

Mr. WHERRY. Has it occurred to the gentleman from Chester that the register of wills might be made as he will be, under the operation of this, nothing but the clerk of the orphans' court?

Mr. DARLINGTON. I have thought of various modes which might be suggested to overcome this difficulty. I think if we were now laying the foundation of the government of this State we should probably adopt the idea that I have suggested and place all this under the control of one officer, as it is in most of the States of the Union. But the difficulty is that we have grown up with this system for one hundred and fifty years, more or less, and are ground into it. We are disposed more to suffer the ills we have than to remedy them. But shall we continue for the next one hundred and fifty years or the next fifteen hundred years in the wrong path, or can we now stop in forming our Constitution and lay down principles for establishing different courts in which we shall have all this jurisdiction conferred on one man or set of men.

If it would have been wise to adopt such a plan at any time, is it not wise to endeavor to do it now, before we get any older? If it is proper to do it, as I think it is, I would do it on the same principle that we would apply in laying out a road through a man's farm—better do it now when the land is less valuable than it will be hereafter. We can more readily make the change now when we are young, than we can when we are five hundred years older.

Looking to the future of the State and the future of society, it seems to me that if we can devise a plan similar to that suggested by the chairman of the Committee on the Judiciary, or something similar to the plan suggested by the gentleman from Philadelphia or something very nearly approaching to both, by which we can establish an office in which everything pertaining to this whole subject should be found, instead of dividing it among two offices, we shall do a great service to the people. I throw out of view altogether in this consideration, the facts which have been stated here by his Honor Judge Woodward, as to the abuses that

have grown up in the city of Philadelphia in the matter of audits. I think that for that they have nobody to blame but themselves; and gentleman will see that I am correct in that statement if they will reflect that in 1832 the Legislature of Pennsylvania, by an act upon the subject, required that all accounts of administrators when presented to the orphan's court should be examined by them or referred to auditors, in their discretion. Under that act the practice instantly grew up, not only in Philadelphia, but all over the State where judges were disposed to save themselves any trouble, to appoint auditors. The practice lasted but a few years when for all the rest of the State except the city of Philadelphia, the law was repealed; and from 1844 or 1845 down to the present day, no accounts were permitted to be sent to an auditor except in special cases. That is the law all over the State except in Philadelphia. Why did not the bar of Philadelphia have it repealed as to this city at the same time? Why have they for thirty odd years submitted to that extraordinary anomaly of allowing any account of an administrator filed in the office of the orphan's court to be sent to an auditor? Why did not Philadelphia object to it? But the habit has so grown in this city that every such account is sent and nothing is exempt. Even if the parties all agree, if all being of full age or they agree that the account of the administrator is right and they do not want it sent to an auditor, it is with the greatest difficulty that they can avoid having it sent to an auditor for examination. A gentleman of my town, settling an estate here of a million or two, when nobody objected to a thing in his account, and when nobody desired his account audited, nevertheless had it sent to an auditor and was obliged to pay six hundred dollars to an auditor for one hour's work. Now if Philadelphia and Philadelphians will submit to such a law, without asking, as did other portions of the State, to have it changed, they have only themselves to blame for it. We could not recover any such charges for audits in the country for two reasons: First, we have nobody owning millions in our part of the State; and second, if we had we should never have submitted to the imposition.

I do not think therefore that there would be any necessity for a constitutional change to remedy any defect of that kind which is entirely in the control of the Legislature, but if we can

adopt a system which will bring all this business into one office, or one court, I think it would be an immense advantage, an immense improvement. Then you would have a probate judge or an orphans' court judge, as you please to call him, whose duty it would be to give to the investigation of accounts his personal attention. If it becomes necessary to aid him by the appointment of auditors, it will be easy to give him that assistance; but if we do this: then a vast improvement will have been effected.

I am quite indifferent as to which of the plans proposed shall be adopted. Whether the plan of the gentleman from Philadelphia (Mr. Woodward) who proposes the amendment or the plan of the chairman of the Committee on the Judiciary. I am indifferent as to whether you call this court the orphans' court or the probate court; but I hope the time has come when we shall adopt a system which will carry all of this business into one court or into one office.

The judge of this probate or orphans' court should be the man whose duty it is to appoint guardians. I would make him sit like a chancellor, every day of his life. His court should be always open so that when in the country a man dies twenty or thirty miles distant from the seat of justice, and his wife or children require a guardian to be appointed, they can have that done whenever they come to court, without waiting thirty days or three months for the court to hold its session or for any other delay. I would go even farther, and allow an application to be made to this judge, at any time, for an order to sell real estate to pay the debts of a decedent and to turn the balance over to his heirs. I would allow an application to be made to him at any time for an order to settle an estate, or for a citation to raise a legacy out of an estate to which it may attach. In short everything that pertains to the orphans' court or to the register's court should be in one hand, and especially should this be so in large cities where there is never any trouble in finding enough for a judge of an orphans' court to do; and in all the large counties where it is at present vested in another court.

These are the general views which occur to me upon this subject.

Mr. EWING. Mr. Chairman: I suppose that the question is fairly between the merits of this section offered by the gentleman from Philadelphia (Mr. Wood-

ward) and section twenty-two of the report of the Committee on the Judiciary. I prefer the section now offered either as an amendment to the section twenty-two proposed by the committee when that is reached, or as a new section here—and this for several reasons.

Probably no other state in the Union and perhaps no civilized country has such a complex and awkward system of administering upon the estate of a decedent as the State of Pennsylvania now has. First in that system we have a register for granting letters testamentary or of administration—there is then an appeal from him to the register's court. When you want to compel an administrator or executor to file an account you go into the orphans' court for an order on him to file an account not in the orphans' court—but in the register's office—that account again goes to the orphans' court thus running back and forth from the register's office to the register's court and orphans' court interminably.

I can see no use whatever for a register in counties where you have a probate court. There is a very great advantage and propriety, I think, in having all the proceedings in relation to the estate of a decedent contained in one office, or the affairs relating to the same administered by one court. There may be some reason in the smaller counties, where there is not one judge for each county, for continuing the office of register of wills; but in the counties where we are to have orphans' courts, I do think that there is no use whatever for it.

Now the reasons for the establishment of a separate orphans' court in the large counties have been so well stated, by the gentleman who offered this section (Judge Woodward) by the chairman of the Committee on the Judiciary, and by others, that I will not attempt to go over them. I think that in Allegheny county all the judges of our courts agree that something of the sort is necessary in order to have the accounts of administrators and guardians and other orphans' court business properly and carefully attended to. And here let me say that as far as our own county of Allegheny is concerned, I do not think we have any of the grievances to complain of that have been described as existing in the city of Philadelphia. We have a register now in office who is serving out his third term, an honest, capable and conscientiously upright man, who I do not think has ever been charged

or suspected of taking a dollar of fees not properly coming to his office; and the opinion of that gentleman is that when we have a separate orphans' court there is no use for a register's office and it ought to be abolished. I have his word for that statement, and I believe that all our bar and all of our judges think the same thing, and all of them are in favor of having a separate orphans' court. I may say further that we have not this great grievance of an auditor appointed on every case where an account is filed in court. There is no auditor appointed save when exceptions are filed to the account, and I do not think that we have had any great grievance from auditor's charges, although occasionally evils have crept in in cases of this kind. The difficulty in that matter lies in the fact that the court, or the auditor, or the attorneys connected with the case, have the fixing of the fees and men are always disposed to be liberal with other peoples' money. They do not object to taking the money of others by their friends and that is one cause why I believe that if you can get rid of auditors altogether, it will be a great advantage to the estates of decedents that come into these courts for settlement.

My impression is that at the present time one judge of the orphans' court will be sufficient for Allegheny county, with its population of three hundred thousand, which is probably the number of its inhabitants to-day. I cannot see, however, where there will be business enough for a judge of the orphans' court alone in a county of seventy-five thousand inhabitants. I think one hundred thousand is a sufficiently low limit for it. And I would prefer seeing some other branches of business put into that court, as the matter of the estates of lunatics and habitual drunkards. That I think would very properly go into that court because there are matters of account very often that come there; matters for the sale of real estate that could properly be put into this court and give it additional and sufficient business. The judges of the orphans' court should be good accountants, careful men.

I prefer the section offered by Judge Woodward for the reason that it abolishes the register's office in all these counties where there is a separate orphans' court, and as I said before, I think it is an office utterly useless, a nuisance, where you will have a separate orphans' court in the county—and this section is more compact

and states distinctly what the duties of that orphans' court are to be. I should very much prefer if he should add to it some provision by which the Legislature might give to the orphans' court or probate court jurisdiction in matters of lunacy and habitual drunkenness.

Mr. WOODWARD. Let the gentleman propose that amendment.

Mr. MACCONNELL. As between these two sections, the one reported by the Committee on the Judiciary and the other offered by the gentleman from Philadelphia, I prefer the latter; but either of them taken by itself does not suit me. I prefer the one reported by the committee so far as the first sentence is concerned. It abolishes the register's court all over the State, a thing which this new section does not do, and it retains the old name of the court; and I think that is exceedingly important, for two reasons. First, it gives us the same kind of a court, with the same name, all over the State. There is to be no court in a large county known by a different name from the courts of the same jurisdiction in the small counties. That is one reason. The other is, that the name of the orphans' court occurs now in all our acts of Assembly referring to the jurisdiction of matters that go into that court. I think that is of great importance.

Then, sir, taking each of the sections by itself I would not approve of it, though if we are to take either of them by itself I will go with all my heart for the new one; but I would combine the two together. I would give to the orphans' court all the jurisdiction that the new section proposes to give it, together with that mentioned by my colleague in regard to the estates and persons of lunatics. Other things in the section reported by the committee I think ought to be retained. My idea would be somewhat similar to that of the chairman of the Judiciary Committee, that we should not proceed with the consideration of this matter until we reach section twenty-two, and that then we should frame a section out of the two containing the most of the matters that are now in the two, but re-written so as to put them in proper order. As to this matter of the necessity of having separate courts in large counties, I think as far as Allegheny county is concerned it has become an absolute necessity.

I refer to one thing that has not been referred to I believe by any of the other gentlemen. In the multiplicity of busi-

ness that comes before the judges of our common pleas court, taking all the courts in which they have jurisdiction, they are not able to give that attention to the papers that are presented in the orphans' court that the importance of the business requires they should have. They are compelled to take the word of counsel that they are right as to form and right in most instances as to substance, and it not infrequently happens that when they come to be inspected they turn out not to be right either as to form or substance.

That is a great inconvenience and it is one that ought to be remedied. Now if we had the judges of this court acting by themselves they would have time to examine all the papers to see that they are right in form and in substance, that the prayers they contain are prayers that ought to be granted or ought to be rejected, as the case might be. That is felt to be an important matter in our county.

In regard to the auditing I think this feature of the section presented by the gentleman from Philadelphia is a most admirable one. And let me say that that will add much to the business of the orphans' court that is now not properly considered its business. The judges then will have to perform the duties that are now performed by auditors. My colleague says that he thinks we should not want two judges at the present time in that court in our county. I think, if my information is correct, that therein he differs in opinion from the judges of our orphans' court. I think at first, when the matter was brought to their attention, they thought that one judge would be sufficient; but that they came to the conclusion afterward that to make the court as efficient as it ought to be there ought to be two judges.

I make the suggestion that the matter should be laid over until we come to the twenty-second section and then that a section shall be framed out of the two, retaining the name of orphans' court, abolishing the register of wills, and throwing the whole business entirely, from beginning to end, into the orphans' court.

Mr. WALKER. Mr. Chairman: I am very decidedly in favor of the amendment of the gentleman from the city. If there is anything in the courts that requires amendment, it is in our orphans' court. I speak more particularly of the section of the State from which I am. With the practice in the county of Erie, I am quite familiar, and I state as an es-

tablished fact that in the orphans' court there the business is in a most deranged condition and it will remain so until there is a change in the system. We want to and we must separate the orphans' court business from the common pleas business. As our system is now it cannot be done.

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

Mr. WALKER. Certainly.

Mr. BARTHOLOMEW. How will the amendment proposed by the gentleman from Philadelphia benefit Erie county or your system there? On account of your population you will not come within the scope of it.

Mr. WALKER. I will answer the question. I am not here, Mr. Chairman, for Erie county. It happens that I was a deadhead, or elected a delegate at large, and therefore represent the entire State, and I am speaking now for the city of Philadelphia, although I have voted occasionally against what her delegates thought their interest. I have done so because I believed it to be right.

But, Mr. Chairman, what I want is this: That we shall have not in Philadelphia and Allegheny but in the entire State an orphans' court system as we have a common pleas system. In the city of Philadelphia they can have it by the appointing of orphans' court judges for the city proper; in Pittsburgh they can have it because the population is there enough; but inasmuch as our orphans' court business is in a deranged condition and cannot be arranged right without another system than that which we have, my view would be to create throughout the State orphans' court circuits. Where one county is not enough add to it, and add to it, and add to it, until there is enough, and then have a judge appointed for that district. Let it have two hundred thousand or three hundred thousand of population. There can be a time fixed when the judges will hear each week in the year or oftener if necessary all orphans' court business from first to last.

When that system is adopted we shall have something that we can handle, and we never shall before. I therefore if it is desired would agree to its being postponed until the other section that the chairman of the committee suggests, comes up, and by that time some gentleman may, if these ideas are not too crude, arrange a section that will secure the object.

Mr. BARTHOLOMEW. Mr. Chairman: I desire to say a word or two on this proposition simply because it bears directly upon the interests of the district in which I reside, for according to the census of 1870 the population of Schuylkill county was one hundred and sixteen thousand. We have three judges in the county of Schuylkill practically: two judges in the court of common pleas and one judge of the criminal court, whose business is practically confined to the county of Schuylkill alone although elected for three counties. Our system is entirely different from that which obtains in Chester county. The offices of register of wills and clerk of the orphans' court are exercised by one and the same person. They are together joined by the act of Assembly. We do not have much complaint arising from the administration of orphans' court business. It may be owing to the fact that few people die in our county worth anything.

Mr. BIDDLE. That is supposed to be a slander.

Mr. BARTHOLOMEW. No, it is not supposed to be a slander; it is a fact. Therefore the imposition of a probate court and a probate judge upon the county of Schuylkill would be the introduction of a person who was purely ornamental and would serve no practical purpose. He would hardly have work enough to do to occupy him a week in the year, unless you give him jurisdiction over lunatics and habitual drunkards. Then perhaps he would be busy, but in no other way.

I am opposed to the amendment of the gentleman from Philadelphia on the ground that it is imperative and compels us to accept a probate court and a probate judge. I do not know that I should object to it so much if it contained the optional clause, but he has seen fit in his wisdom to strike that out, and therefore it will render the establishment of such a court compulsory upon the counties of the State where the judicial force is large, where there is no complaint, and where the court itself is wholly unnecessary.

I think the section in the report of the Committee on the Judiciary contains all that is necessary on this subject. There is unquestionably a very great evil in the mode and manner in which decedents' estates are settled and disposed of in the city of Philadelphia. Certainly I have heard such complaints made; and it may be the case also in Allegheny. The report of the committee covers both those counties. It also provides that in counties

containing a population of a hundred thousand the Legislature may establish these courts. If they are necessary and the people require them they certainly will make the demand, and they will induce the Legislature to take such action as will comply with the demands and requirements of the particular localities.

I take it that such a proposition as this, fastening upon the Commonwealth a number of judges, creating a very large additional expense, when it is already in contemplation to increase the judicial force largely, where it is not absolutely necessary for the due and proper transaction of business, will not be received with favor. Therefore I shall stand by the report of the committee as it has been made with the optional clause in it, and then if the time shall arrive when it becomes necessary in counties with a growing and increasing population to establish these courts, the Legislature may in their wisdom establish them upon request. I think the true plan is for us to stand by the report of the committee which provides for the existing evils in the city of Philadelphia and in Allegheny county, leaving it optional with the other counties of the State to apply to the Legislature to grant what they desire for the requirement of their necessities.

Mr. WOODWARD. I wish merely to say, and perhaps should have said before, that I am entirely indifferent as to the disposition that may be made of my amendment. I offered it to-day because I shall not be in the Convention for several days to come, and I wanted to put it on the record right here. I have accomplished my purpose therefore in moving it and am willing that the Convention shall dispose of it as they see proper. If it shall go over until the section alluded to in the report of the committee is reached, I do not know that I have any objection to that. But, sir, as I shall not be here when it is reached in that way, I want to say now in reply to my friend from Allegheny, (Mr. MacConnell,) for whom I have great respect personally, I know the strength of the attachments of old men—I am an old man myself—yet I hope he will not stick to this title "orphans' court" with undue tenacity.

Mr. MACCONNELL. I beg the gentleman not to make me too old. [Laughter.]

Mr. WOODWARD. Oh, no, certainly not. I say I hope he and no other gentleman will stick to this title of "orphans' courts" with undue tenacity, because



you know, sir, that we are the only State in the United States in which there is such an anomalous court as the orphans' court; and when lawyers from other States are investigating titles in Pennsylvania they have no more idea of what our orphans' court is, its jurisdictions and powers, than they would have of the Athenian areopagus. They all have probate courts. Now why should we not have a probate court?

This court of orphans, as it used to be called in London—not orphans' court, but court of orphans—was a municipal court originally, belonged to the city of London, and has been transferred here, and it has answered a good purpose; but in some counties it has fallen into very loose practice and into great abuses. In reforming them, I think we should do well to conform our system to that which prevails in all the States around us, and to call that court a court of probate; a court that takes proof of wills, grants letters of administration, appoints guardians to minors, makes orders for the sale of real estate; in one word, a court to settle up the estates of dead men, and settle them by a responsible judge, a man of competency, and whom the public recognize as a public officer, with the aid of a clerk whom he appoints himself, and on him, the judge, and his clerk rests the responsibility of settling that dead man's estate, and that without charge to the widow and children. That is what I want to get at. I do not care whether you call it a court of probate or orphans' court. For the sake of being in company with everybody else in the United States, I would prefer to call it a court of probate; but I want the thing. Let us begin it in the large counties where the great abuses exist now, and it will extend itself into the smaller counties until it becomes universal throughout the State; and that is the result to which I hope this agitation may finally lead.

The gentleman from Allegheny (Mr. Ewing) proposes to add to this court jurisdiction in cases of lunacy, habitual drunkenness, and that class of cases. I have no objection to that. If the committee think well of that amendment, I will not object.

Mr. EWING. I would not ask for that amendment now because on looking at section twenty of the report of the committee, I find that that very matter is provided for. It is lodged in the common pleas, but with power in the Legislature

to vest it in such other courts as they shall judge proper, &c., which is precisely what I want.

Mr. WOODWARD. I have said, sir, all that I desire to say on this subject.

Mr. ARMSTRONG. I desire to say but a word. I am glad that this debate has taken place as it has, for it has attracted the attention of the committee to this very important subject, and doubtless at the proper time we shall be prepared to consider it with advantage and with wise discretion.

I will state that the report of the committee abolishes the register's court in every county of the State. The proposed amendment does not, but leaves it in its full force in every county with less than one hundred thousand inhabitants, which will be all the counties of the State except five, I believe. Then as to that part of the amendment which proposes that the auditing shall be done by the orphans' court judge or probate judge, we omitted it simply because we thought it appropriate for the Legislature; but I will say at this time that I thoroughly approve of it as a principle, and will move it as an amendment to the section when it comes up, in order that it may then be considered whether it is proper to be placed in the Constitution or left in the discretion of the Legislature.

What I apprehend is that if we depart from the regular order of the report as it stands now before us, we shall get into confusion. All these subjects will be appropriately considered, and are embraced in the report, and as they come up in order we can consider them, I think, with greater advantage than by interjecting them in this way out of place, so far as the report is concerned.

I again repeat that I am in full accord with the views of the gentleman with respect to orphans' courts and the necessity for adopting them, and differ with him only as to the necessity of applying the system to the entire State. I would leave that matter to the discretion of the Legislature. But when it is properly reached in the report we can consider it all in detail.

Mr. BIDDLE. I simply wish to say in explanation of the vote I am about to give, that when the section in the report of the Committee on the Judiciary which is kindred to this particular subject comes up, I shall be in favor of incorporating in it several of the suggestions contained in this section which is offered by the dis-

tinguished gentleman from Philadelphia (Mr. Woodward.) I concur cordially in that part of it which has relation to the auditing of accounts. I concur entirely in that part in which, after giving the jurisdiction of the register's and orphans' courts to this new court, does away with the register. But I doubt the propriety of making it compulsory for every county in the State, after what I have heard. I doubt about voting on it just now. I think we had better proceed in due order with the different sections of this article, and when the subject comes up, as it will I think in section twenty-two, let us embody in that section the very valuable suggestions which are contained in this section. I merely say this in explanation of the vote I shall give on the section now.

Mr. HUNSICKER. I desire to withdraw my amendment.

The CHAIRMAN. The delegate from Montgomery withdraws his amendment to the amendment, to strike out "one hundred thousand" and insert "fifty thousand."

Mr. DARLINGTON. I do not know whether the gentleman from Philadelphia desires a vote on the proposition at this time, or whether he proposes to reserve it for future action. I do not want an adverse vote against it, if I can help it.

Mr. WOODWARD. I do not care about it. I have explained that I moved it only to complete my record, and I do not care what the Convention do with it, adopt it or postpone it.

Mr. DARLINGTON. You do not want a vote against it. You had better withdraw it for the present.

Mr. WOODWARD. I do not want to withdraw it, because that would destroy my object in moving it.

Mr. MACVEAGH. You can move it again when the subject is reached in the report of the committee.

Mr. WOODWARD. I shall not be here. If I were to be here when the twenty-second section was reached, I would withdraw it.

Mr. CORBETT. I will remark to the gentleman that I understand the gentleman from Philadelphia (Mr. Biddle) says he will move it when that section comes up.

Mr. DARLINGTON. There are half a dozen of us who will do it if the gentleman from Philadelphia (Mr. Woodward) is not here.

Mr. WOODWARD. Well, sir, I believe I am the only practical man in this body. [Laughter.] I always yield to last impressions. Everybody seems to be in favor of my amendment and in favor of my withdrawing it [laughter;] and I want to accommodate gentlemen in all respects. I therefore withdraw the amendment.

The CHAIRMAN. The amendment is withdrawn. The next section will be read.

The CLERK read as follows:

SECTION 9. 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.

Mr. KATNE. I suggest to the chairman of the committee to embody the tenth section with this as it is in the old Constitution.

Mr. ARMSTRONG. Which is that?

Mr. KATNE. It ought to follow here just as it does in the old Constitution. The fifth section of the fifth article of the old Constitution is the same as this very nearly, but at the end of the fifth section is the following:

"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."

I suggest to the chairman to make it one section in place of two.

Mr. ARMSTRONG. It was divided for convenience. It is a very great convenience for counsel in using the Constitution in an argument before the Supreme Court to be able to refer to it specifically by sections. Therefore, it is better divided.

Mr. BARTHOLOMEW. I desire to amend the section in the fifth line after the word "court" by inserting "of oyer and terminer and general jail delivery;" so that it will read: "And shall be competent to hold the court of oyer and terminer and general jail delivery, of quarter sessions of the peace, and the orphans' court thereof." Under the old Constitution capital cases cannot be tried in the court of oyer and terminer without two judges, one of whom shall be learned in the law. I propose to raise the question virtually here whether the associate judges not learned in the law shall be retained or not, be-

cause if the office of associate judge is to be abolished, then of course it will leave in most of the districts of the State but a single judge on the bench and he will of necessity be compelled to try all cases alone. If the section is left as it stands he is not empowered to hold a court of oyer and terminer but only the court of quarter sessions. Therefore I think it is proper to make this section complete in itself that it should have this addition made to it; and it is a question for the Convention to consider now whether they will abolish the office of associate judge. It strikes me that this raises the question.

Mr. WHERRY. I would mention that section twenty-six raises that question directly. I trust the committee will not confuse the consideration of the present section by the introduction of matter which is wholly foreign.

The CHAIRMAN. The question is on the amendment of the delegate from Schuylkill (Mr. Bartholomew.)

The question being put there were on a division ayes twenty-five, less than a majority of a quorum. So the amendment was rejected.

The CHAIRMAN. The question recurs on the section.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section ten as follows:

SECTION 10. 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 for review into the Supreme Court when authorized by law.

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

"In every criminal case the accused as well as the Commonwealth may remove the indictment, record, and all proceedings to the Supreme Court for review, in the same manner as civil cases are now removed and reviewed; but such removal shall not, except in cases of felonious homicide, be a *supersedeas* unless the judge before whom the case was tried shall certify that the same is a proper one for review."

Mr. Chairman, I confess that I have very little hope that this reform will be adopted by this Convention, and I therefore speak under the disadvantage of expecting defeat; and yet I should be unmindful of my duty as I understand it, if I did not call the attention of this Conven-

tion to the redress of a wrong that is entrenched behind antiquity.

It is somewhat surprising that this State should have existed so long and that there should have been in all that time no mode prescribed by law by means of which a party accused of crime should be tried according to law. I need not go back to the creation; I need only go back to the time when *magna charta* was signed, which was some six hundred and fifty-eight years ago, to find embodied the essential principles of civil liberty and of the individual rights of the citizen. That has always been regarded as the bulwark of the liberties of the Englishman and comes to us as a heritage from our mother country. It contains the principles upon which every civilized government is founded, and the language of it reads just as well to-day as it read to the barons at Runnymede. It emits no uncertain sound; it reads:

"No freeman shall be taken, or imprisoned, or dispossessed, or outlawed, or banished, or in any way destroyed; nor will we pass upon him, nor commit him but by the lawful judgment of his peers or by the law of the land."

The next section reads:

"To no man will we sell, to none will we delay, to none will we deny justice."

These words are resonant of liberty and in the struggle for centuries against wrong, they come down to us as fresh and as clear to-day, as though they were the achievements of yesterday.

The substance of this great declaration is embodied in articles four, five, six and seven of the amendments to the Constitution of the United States. The same in substance is embodied, reiterated, and reasserted in the Bill of Rights of every American State, and in our Constitution we say in the Bill of Rights 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 due course of law, and rights and justice administered without sale, denial, or delay." "All courts shall be open." Will any gentleman on this floor tell me what courts are open to the man accused of a crime? What courts are open to-day unless a man be tried for felonious homicide, except the court of the vicinage with a single judge to try him for that which is dearer to him than his property?

It would seem from this review and from the fact that these declarations are embodied in the Constitution of every

State, that they should mean something. But what do they mean? It is a delusion; it is a word of promise to the ear but is broken to the hope. Do not treat this with silent contempt, but tell me whether every judge of the quarter sessions or oyer and terminer is not a law unto himself. When you put a witness upon the stand the judge passes upon his competency, upon the relevancy of the testimony; he admits or excludes it; and there is no power in the law of Pennsylvania to-day by which you can review the judgment of that judge. It is true that you have an act of Assembly which allows you to go upon your knees to the judges of the Supreme Court and beg a special *allocatur* to remove the record to the Supreme Court by virtue of the present constitutional provisions and acts of Assembly; and what do you remove to that court for review? You remove the indictment and sentence; and if the indictment charges an indictable offence and the sentence conforms to the indictment, the judgment is affirmed.

MR. DARLINGTON. No.

MR. HUNSICKER. Yes, sir.

MR. DARLINGTON. The gentleman will allow me to state—

MR. HUNSICKER. Certainly.

MR. DARLINGTON. In the very last case brought before the Supreme Court from Chester county, the case of *Grant vs. the Commonwealth*, the evidence was taken up.

MR. HUNSICKER. A murder case?

MR. DARLINGTON. Yes, a murder case.

MR. HUNSICKER. I do not dispute that; but that is under an act of Assembly, and a quite recent act passed for the case of *Dr. Schoeppe* in 1870. In that case Schoeppe was convicted of murder; but even in that case there was a measure of redress because you could get that case up to review the rulings of law as in a civil case; but there the Legislature went further and passed an act allowing him to remove the whole record and evidence and allow the supreme judges to grant a new trial. In that very case after a new trial was granted the judge charged the jury that there was no evidence against the prisoner, and he walked triumphant out of that court house after having been in prison for a series of years. If it had not been for that last act of Assembly he would have been hung; he was already sentenced to the gallows. Is it not frightful that it was possible under our present

Constitution, that an innocent man should be hung, and hung, too, in violation of law, and that it required an act of Assembly to prevent judicial murder!

The present constitutional provision is not sufficient. Let me illustrate what I mean. The Constitution of the United States declares that no man shall be compelled to testify against himself. Yet I have a gentleman in my eye who can vouch for the truth of what I say when I state that an *upright* judge in this Commonwealth, in a case of adultery on trial before him, placed upon the witness stand the prosecutrix, who was also a married woman, and who declined to testify upon the ground that her answer might criminate herself. The judge said "you must testify." The counsel interposed and said "it is her constitutional right, may it please your honor, to decline to testify" and the court answered "mind your business, this court will attend to its own," and that judge compelled that woman to testify under the threat of imprisonment for contempt of court if she refused, and under her testimony the defendant was convicted and sent to prison. That judicial outlaw compelled that woman in violation of a provision made for her benefit in the Constitution of the United States to testify and will any gentleman upon this floor tell me where there was redress for that wrong?

[Several Delegates. "Impeach him!"]

MR. HUNSICKER. Yes, impeach him! And while you are impeaching the judge the poor victim of his malice will be languishing in prison. Do you tell me that if some miserable litigant for the sum of five dollars and thirty-four cents shall have a judge sitting upon the bench taking down the testimony, noting exceptions, and framing a bill of exceptions, in order that that case shall be carried up to the Supreme Court and that the supreme judges shall hear an argument involving the right to five dollars and thirty-four cents while a citizen whose liberty has been taken from him by a judicial outlaw shall languish in prison with the right of appeal denied him?

Oh, but it is said, this will increase the business of the Supreme Court already overburdened and overworked! Then I say find some other outlet for that business. Let the litigant who has at issue five dollars and thirty-four cents lose his money, rather than that the State of Pennsylvania shall be longer disgraced by a

Constitution that is but a sounding brass and tinkling cymbal, that signifies nothing. Your Declaration of Rights is a delusion, as much a delusion as were the witches to Macbeth.

As I said before, I have no hope that this reform will be accomplished, yet I have no doubt as to the justice and propriety of this provision. I propose what? I propose by this substitute that in criminal cases the accused as well as the Commonwealth may remove to the Supreme Court the indictment record and all proceedings for review, in the same manner as civil cases are now removed and reviewed. Not that every miserable case of assault and battery shall go to the Supreme Court, because I provide in the amendment that the writ shall not be a *supersedeas*, so that sentence may follow a conviction; but if the judge has committed an error of law, that it shall be a matter of right and not a matter of grace, that the accused shall have decided by the final court of the State whether he has been lawfully tried and whether he has received justice according to law.

Of course if the provision was that every case should go there and the sentence should be suspended, that the writ of error should be a *supersedeas*, cases would be taken to the Supreme Court possibly for purposes of mere delay. But when there shall be no *supersedeas* unless the judge himself before whom the case was tried shall certify that it should go to the Supreme Court as a proper case for review, the judge goes on and passes his sentence and the person under sentence is imprisoned under the force of the sentence and judgment of the law. There is no stop to the wheels of justice. They move on evenly, and all that this provision says is that the accused may carry his case to the Supreme Court for review. Then if the judgment of the court be reversed all that the man can do is to say with Schoeppe, that he had to suffer a temporary inconvenience and a temporary imprisonment for the sake of the common good. But I say to you, Mr. Chairman, and through you to the members of this committee of the whole, that if the court below is aware that it is the constitutional right of every citizen to have noted upon the judge's notes the offers of testimony and his rulings upon them, and a bill of exceptions to those rulings, and that they shall be, as a matter of right, a subject of review by the Supreme Court, you will not find the judges

of the courts below hurrying through their criminal cases as they do now to the disgrace of our jurisprudence.

This is all I have to say on this subject, except that I venture the assertion that there is not upon the floor of this body a single gentleman who will not admit, that as a matter of justice and of right, the liberty and reputation of the citizens should at least be as much an object of solicitude upon the part of the law as should be the claims of a man who sues for five dollars and thirty-four cents.

With these remarks I shall submit this proposition to the tender mercies of the committee.

Mr. MACVEAGH. Mr. Chairman: I shall be glad to hear from the chairman of the Committee on the Judiciary what is the necessity for providing, in the section before us, that as authorized by law writs of error shall be allowed to the Supreme Court. That I take it is the substance of section ten as I read it.

"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, for review into the Supreme Court when authorized by law."

Mr. ARMSTRONG. Otherwise it would be absolute and imperative. There would be no limitation upon it.

Mr. MACVEAGH. It does not need a constitutional provision to say that writs of error not forbidden by the Constitution shall be issued. They are issued now and I do not still see what is the meaning of the words "when authorized by law."

Mr. ARMSTRONG. If these words were not in the provision as it is now, and the section were passed without them, it would become an imperative right.

Mr. MACVEAGH. Then if the whole section were voted down, would not that right be as good as it can be if the section is adopted?

Mr. ARMSTRONG. I think not. The words were introduced for a purpose. It is one of the old provisions that have always been in the Constitution of the State.

Mr. KAINE. No, sir; that is a mistake. These words are not in the present Constitution. The Constitution as it now stands is precisely the same as this section under consideration, with the exception of the words "when authorized by law." I do not think that the Committee on the Judiciary intended that the words should be inserted. I believe they have been added here by mistake.

Mr. ARMSTRONG. I certainly find it here in the fifth section of the fifth article of the present Constitution.

"The party accused, as well as the Commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and the proceedings, or a transcript thereof for review into the Supreme Court."

I think the words "when authorized by law" are tautological in the present section.

Mr. Kaine. I think they should be stricken out.

Mr. ARMSTRONG. Very well.

Mr. MACVEAGH. Then if stricken out the section will be exactly in the language of the old Constitution.

Mr. Kaine. Precisely.

Mr. MACVEAGH. Even when it is corrected in that form, the difficulty still remains to my mind. What is the use of providing by the Constitution that a writ of error may issue when allowed by law? Certainly if there is no prohibitory clause in the Constitution, it may issue anyhow.

Mr. Kaine. Certainly it may issue in all cases.

Mr. MACVEAGH. If the law provides for it. It could not issue until the law provides for it.

I still want the idea of the chairman of the Committee on the Judiciary because I do not understand it. Why should there be anything in the Constitution upon the subject? There is no prohibition upon the Legislature now to authorize writs of error and certainly they can be issued without a constitutional provision in favor of it.

Mr. PURMAN. Certainly.

Mr. MACVEAGH. That is all this provision is.

Mr. ARMSTRONG. I will explain to the gentleman. By the tenth section, the right to remove suits to the Supreme Court is absolutely guaranteed. The provision is, that they shall be removed under such regulations as shall be prescribed by law. All that is left to the Legislature is to prescribe the mode and limitations, but the right is fixed in the Constitution. That is why the clause was introduced. It defines the right to remove a case to the Supreme Court, and leaves the Legislature to define the mode in which it shall be done.

Mr. MACVEAGH. Is that intended to cover every criminal case?

Mr. ARMSTRONG. As regulated by law.

Mr. MACVEAGH. Then it gives the right to a man to an appeal in every crim-

inal case. I submit that the Committee on the Judiciary did not mean to do that.

Mr. ARMSTRONG. It is the law under the old Constitution, and now strengthened by judicial construction.

Mr. MACVEAGH. I should like to know what judicial construction it has ever received.

Mr. Kaine. This is a limitation. The gentleman from Dauphin (Mr. MacVeagh) is right in his idea about this. If this language were not there, the Legislature might pass any law on the subject; but as it is, 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 for review into the Supreme Court. Then whatever the Legislature provides, may go the Supreme Court, and nothing else.

Mr. MACVEAGH. That might be done without this provision.

Mr. HAY. And it might not.

Mr. BIDDLE. Mr. Chairman: I feel very much inclined to vote for this amendment offered by the gentleman from Montgomery. I confess that I have been very greatly impressed with what I have heard from him upon this subject. It does strike me as a very great anomaly that in regard to the sum of five dollars and thirty-four cents you have the right to a writ of error in the Supreme Court; but when you are tried for anything short of your life—that is now prepared for by statute—when your character is involved, your relations to your family or the whole community, the ruling of a perverse or stupid judge cannot be over-ruled by the court of last resort. I know it will be said, and said probably truly, that if you allow writs of error in all these cases, you encumber the Supreme Court. To this I have but one answer; I cannot help it. It does not impress me as an answer at all.

I bring this matter home to myself. Suppose that I am on trial on a criminal charge; I know exactly what I should desire in such a case as that. It would be of course to have the law applied to my case as accurately as it could be applied. But I cannot see why every other man in the community, entertaining the same desire, should not also have the right to have it so. I fail to see what the true answer is. If you do not make it a *supersedeas*, the criminal would not go unpunished. I do not believe it would have the effect of carrying up to the Supreme Court every

petty case of assault and battery and such trivial matters; and if it did you might put some limitation upon it. The principle, it seems to me, is right, and unless I am better advised by arguments which may be adduced here on the other side, I, for one, shall certainly vote for the amendment.

Mr. PURMAN. If it is in order, I should like to move to amend the section under consideration by striking out the words "as shall be prescribed by law."

The CHAIRMAN. The Chair will inform the gentleman from Greene that an amendment has been offered by the gentleman from Montgomery striking out the whole section and a motion to amend the section would not at this time be in order.

Mr. PURMAN. Then I will state to the committee of the whole what I propose to do with my amendment. I propose to strike out the words "under such regulations as shall be prescribed by law" and then the section will read:

"The party accused, as well as the Commonwealth, may remove the indictment and proceeding, or a transcript thereof, for review into the Supreme Court when authorized by law."

That would secure the right to a writ of error as a constitutional right; the Legislature could not take it away; the Supreme Court could not refuse to review the cause; but the Legislature might regulate the exercise so as to make it conform to the necessities of the case. As the gentleman from Philadelphia (Mr. Bidle) says, it is not probable every case of assault and battery would go to the Supreme court, and the Legislature might prescribe such restraints and such limitations upon trifling and idle causes so that they would not go into the Supreme Court; but in all cases of consequence, where either life or liberty was at stake, the parties should have the right to be heard in the Supreme Court; and judging from the tone of the Legislature a few years ago they would be very willing to regulate the exercise of it so as to secure the right of every party to a hearing that ought to have it. I never could see why a man should have his cause reviewed in the Supreme Court when he had five dollars and thirty-three cents or one dollar at stake when the common pleas had jurisdiction, and why when on trial for his liberty he should not have his cause heard in the Supreme Court. There is no justice in it.

Mr. MACVEAGH. I trust the Convention will see that the words "for review" are in the section. They are not in the old Constitution, and that I think will be found to make a material difference, for how could the Commonwealth have a writ of error under your Bill of Rights and a re-trial after a man had been once been tried and acquitted? Is it intended to do that, that the Commonwealth up on a verdict of "not guilty" shall have the case taken up and reviewed and another trial? This is introducing entirely a new question; I do not say how the Convention ought to decide it; but I say it clearly ought to understand it. This means taking a writ of error in a criminal case and putting a criminal case exactly like a civil case. Certainly it raises a very serious question; and that is what I want to bring to the attention of the committee. The Commonwealth can have no benefit of a writ of error because if the man is convicted she does not want any, she has gained her cause. If he is not convicted he is acquitted, and if he is acquitted, is she to take a writ of error for the purpose of re-trying him? The difference is in the words "for review."

Mr. DARLINGTON. Suppose there be a verdict of guilty and a motion in arrest of judgment by the court, could the Commonwealth then take a review?

Mr. MACVEAGH. A motion in arrest of judgment, and that motion decided how?

Mr. DARLINGTON. Decided against the Commonwealth. Could not the Commonwealth have a review?

Mr. MACVEAGH. If there had been a verdict of guilty and then there was a judgment setting aside the verdict?

Mr. DARLINGTON. Judgment arrested.

Mr. MACVEAGH. A motion in arrest of judgment. It might in that case; but under this clause it also could in case of acquittal. And that does not enter into the consideration of the argument of the gentleman from Montgomery, to which I listened with a great deal of interest and upon which I have certain convictions; but I utterly scout the idea, for one, that any man has a right to take his case to the Supreme Court. A civilized State owes to its citizens the construction of courts of justice; but the sooner you come to a determination of the issues involved, the better for everybody. It is wise to have a superior court of last resort to settle certain rules for the government of cases; but it is not a rule that gives any case of

assault and battery or a case of \$5 the right to be tried in that court.

Mr. HUNSICKER. Would not the gentleman have the party tried according to law?

Mr. MACVEAGH. Certainly; I would have him tried according to law.

Mr. HUNSICKER. Who is to determine the law?

Mr. MACVEAGH. The judge authorized by law to determine it. The right of appeal does not belong, because the hardship is no greater to stop in the second court than to stop in the first. I grant you that this distinction which has existed between criminal and civil causes ought not to exist; that criminal causes of considerable magnitude ought to be reviewable wherever civil causes of considerable magnitude ought to be reviewable, and if a distinction ought to be made in favor of either, I agree the distinction ought to be made in favor of the criminal causes rather than of the civil.

Mr. HUNSICKER. What is the extreme limit that a judge can impose a sentence for assault and battery?

Mr. MACVEAGH. I do not remember the maximum of punishment.

Mr. HUNSICKER. It is a good many years imprisonment.

Mr. MACVEAGH. But what I hold is that there is no desirableness in furnishing opportunities of litigation where the matters in controversy are not of some magnitude, and that nobody has a right to insist that a court shall be employed in order to sit and hear his cause in review that has no substance in the litigation.

Mr. ARMSTRONG. I concur in striking out the words "for review" in the tenth section. That will reduce the section to the precise verbiage of the section as it stands in the Constitution. It may be that there is some force in the suggestion of the gentleman from Dauphin. There are cases of indictment as for a nuisance, questions of that kind, in which the action is in the name of the Commonwealth and yet where the rights are civil rights. I do not think it is safe to introduce into the Constitution any provision of which we cannot see the probable working and effect, and I do not see very clearly what the effect would be if the words "for review" are continued.

In respect to the amendment proposed by the gentleman from Montgomery, if there is any one thing that the experience of criminal jurisprudence in this country has demonstrated it is the extreme

carefulness of conviction, and I doubt whether the experience of persons here would show one case in a hundred in which injustice has been done by conviction; in ninety-nine cases in a hundred it is the other way, criminals are protected rather than unjustly convicted. But the law provides, I think, sufficiently upon that point because any indictment may be removed for review when the Supreme Court will allow a special *allocatur*. It has to be asked for by the party and it may be taken either by the Commonwealth or the defendant; and it has been expressly ruled in the Commonwealth *vs. Winnemore*, that if the judge has any doubt about the accuracy of the rulings of the court it is his duty to grant an *allocatur*. So that if there be any reasonable doubt whatever that injustice has been done to a defendant by a wrong conviction, an *allocatur* is granted. By another provision of the act of Assembly the application must be made within thirty days, so that there is no delay, and there is practically no evil.

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

Mr. ARMSTRONG. Yes, sir.

Mr. HUNSICKER. What is reviewed by the Supreme Court on such an application as that?

Mr. ARMSTRONG. They review nothing but the questions of law.

Mr. HUNSICKER. They simply review the indictment and the sentence.

Mr. ARMSTRONG. The record.

Mr. HUNSICKER. The judges' notes are no part of the record. The offers of evidence are not noted, nor is the exclusion of evidence noted, except in homicide cases.

Mr. ARMSTRONG. Under this section the Supreme Court, if an indictment was removed, might try the cause if they saw proper.

Mr. WOODWARD. I have known it done. I have known one case to be removed pending its progress in the criminal court. It was not tried because the cause was abandoned, but it was removed to the Supreme Court.

Mr. ARMSTRONG. It is not well to depart from these established landmarks. If there was any evil that was pressing upon the people in the connection which the gentleman from Montgomery has expressed, I should be in favor of correcting it; but I think it is rather hypothetical than real. No such case has fallen under my observation. I do not know cases of



false conviction; they may have occurred, but I do not know of them. I think the power is sufficiently and safely vested under the Constitution as it is.

Mr. CUYLER. I am not quite in sympathy with the amendment of the chairman of the committee, striking out the words "for review."

The CHAIRMAN. The Chair will remind the committee that the only question before the committee now is the amendment offered by the delegate from Montgomery (Mr. Hunsicker.)

Mr. CUYLER. The words of the old Constitution were these:

"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."

I understand these words to mean simply this: That under such regulations as are prescribed by law the indictment may be removed for trial into the Supreme Court. I do not understand it to refer to the removal of causes for review but simply to their removal for trial. It authorizes the Legislature by a suitable act of Assembly to do what we have in fact done; that is permit the removal of the indictment itself and the trial of the cause there.

Nor am I clear that the gentleman from Dauphin is perfectly right when he supposes that a power of review in the Supreme Court without a special provision in the Constitution would exist or that it would be competent for the Legislature by an act to provide for it; because where the Constitution draws a clear and marked distinction between civil courts and criminal courts, I do not perceive that the power of removal by an act of the Legislature to the Supreme Court for review of a cause disposed of in a criminal court exists. The Constitution prescribes the method of dealing with criminal matters. It is silent as to a review in any other court than the defined court of criminal jurisdiction. I do not perceive how it can be that the Legislature can have a power to provide for a review of the case in the Supreme Court. Hence the necessity for an express provision such as the Judiciary Committee have reported here, that the Legislature may provide for the removal of a cause so that it may be reviewed in the Supreme Court.

Now, one point wherein it differs from the old Constitution is that it permits the

Commonwealth as well as the prisoner to have that right. It is objected that that would come within the scope of the clause in the Bill of Rights as to putting one twice in jeopardy of life or limb. The answer to that is, first, that it is expressly provided for in the instrument if you adopt this clause; but second and chiefly, that it is one proceeding all the way through. He has not been in fact put in jeopardy in the sense of the Constitution, interpreting the two clauses, the clause of the Bill of Rights and this clause, in their proper relation to each other. He has not been in fact put in jeopardy if the trial has been such as that he was not lawfully acquitted. It is one proceeding until it shall reach its final determination, so that I think the two clauses, the clause in the Bill of Rights and this clause, may well stand together and not be in conflict at all.

On the whole, therefore, it seems to me that this amendment, as the committee propose it, is a worthy amendment, is a step in the right direction. While it gives to the prisoner the right of review on appeal, which otherwise he would not have, it gives also to the Commonwealth the correlative right of review so far as its interests are concerned, and it makes the criminal law of the State ascertained, defined, by appellate courts in the last resort. I think therefore the chairman of the committee is in error in proposing to withdraw those words "for review," and that they ought to continue in the section.

Mr. WOODWARD. Mr. Chairman: This clause as it would read as it stands has been correctly expounded by the gentleman before me (Mr. Cuyler.) It does not contemplate review of a criminal case at all, but contemplates a removal of a criminal case under peculiar circumstances, to the Supreme Court for trial, and that has been done several times. I remember a class of cases arose in this city, I do not recollect what the subject of complaint was, but I know it was some very exciting question at the time, and indictments were pending here against some parties, an application was made to the Supreme Court, and it was then shown to the Supreme Court that every removal of a criminal case into that court had ended in a failure of trial and justice never was administered in that way in the Supreme Court; but my recollection is that the cases were removed and some judges went into *nisi prius* some day and dismissed the whole concern without trial at all.

Now, Mr. Chairman, the motion of the gentleman from Montgomery is, in my judgment, one of the most important innovations that I have heard in this Convention. It proposes, if I understand it, that all criminal cases shall be removable into the Supreme Court either at the instance of the Commonwealth or of the defendant, as civil cases are now removed. That is the substance of the amendment. If that be not a novelty in Pennsylvania, I do not know what it is. I concur with what the chairman said, that all our experience proves that innocent men are not convicted and punished in Pennsylvania; that ninety-nine guilty men escape for every innocent man that is convicted. In forty odd years of judicial experience in all its forms, I cannot recall an instance in which a man of whose guilt there was even a doubt, has been subjected to punishment.

Mr. HUNSICKER. If the gentleman will allow me I will tell him of a case that happened in our county. I defended a negro there for arson, and the Commonwealth proved a complete *alibi* for the prisoner, and yet, notwithstanding the Commonwealth in that case proved a complete *alibi*, because the judge took a particular view and excluded some testimony he charged the jury that there was sufficient evidence for them to convict, and that man was convicted and suffered an imprisonment of six years; and I am very well satisfied from subsequent developments that that man was entirely innocent.

Mr. WOODWARD. I do not say that such cases have not arisen. I only say they have not arisen under my observation. I have never seen or heard of the case of an innocent man being convicted and needing this sort of review. Now, sir, if you pass this amendment, understand that every assault and battery, every case of surety of the peace, every quarrel between a drunken husband and his unfortunate wife will go into the Supreme Court in some form or other.

Mr. BARTHOLOMEW. And notes of the testimony will have to be taken in every criminal case.

Mr. WOODWARD. Yes; and cases of fornication and bastardy will go there. Some of the most contested cases I have ever seen were cases of fornication and bastardy. I never knew of but one acquittal in a case of fornication and bastardy, and in that case the defendant told me, after he was acquitted, that he was

guilty. [Laughter.] He was my client, and we got him off, but he admitted afterwards that he was guilty. He ought to have been convicted.

Mr. Chairman, as a general rule, whatever may be the particular case to which the gentleman alludes, the tendency of the criminal law is rather to let the guilty escape than to punish the innocent. In view of that fact, which I think our experience abundantly establishes, I confess I am not in favor of burdening the Supreme Court, whom we have been trying in another form to relieve, with all the criminal cases, big and little, foul and fair, which will arise in Pennsylvania and which will go there if this proposition be adopted. As at present advised, I am not in favor of my friend's amendment.

Mr. HUNSICKER. One word of explanation. I think the gentleman from Philadelphia does not comprehend the full scope of the substitute. There is a provision in the substitute that the removal to the Supreme Court shall not be a *super-sedeas* unless the judge trying the cause shall certify that the same is proper for review. It is well known that for most of the districts the judges of the Supreme Court assign a single week, or at most two weeks, for the hearing of the causes from that particular judicial district, and the consequence would be in the case of fair weather and foul vice between husband and wife, if the husband was sentenced to a small imprisonment, he would undergo his full period of imprisonment before a writ of error would avail him. At the same time, I would not have it possible that any citizen of the Commonwealth should have his reputation destroyed beyond the possibility of reparation; and that is the reason why I want to hold over the judges in the court below this wholesome restraint, so that every question of law and evidence may appear upon the record, and if the party, after having suffered the penalty, sees fit to have his reputation restored by having the law declared in the court of last resort, he shall have at least the poor privilege of going and doing that thing.

Mr. CASSIDY. Mr. Chairman: It has been stated by the delegate-at-large (Mr. Woodward) that this is an innovation upon the constitutional practice and law of Pennsylvania. I regret to say of Pennsylvania that it is so. To the discredit of the law in Pennsylvania, in my judgment, permit me to say, the man who has a contest for \$5 34 of his property, may have that contest taken to the court of final re-

sort and there considered; and yet upon a question that involves the character of himself and the good name of all who are dear to him, he cannot have it reviewed. In a case that involves his personal liberty and all that is valuable to him and to all who come after him, he cannot have that heard in the Supreme Court of this State. In our Commonwealth the right to be heard in the court of last resort is measured by the miserable question of how many dollars are involved, not how much of principle, not how much of character, not how much of liberty. To do away with that disgrace to the enlightenment of the day this section has been introduced, and I trust no dissenting vote will be heard in this body.

My friend says, that the law of Pennsylvania has been administered more in favor of criminals than otherwise. I think not, Mr. Chairman. I know in my experience of many cases that prove the contrary. In this county a man was convicted for a grave felony, and sentenced, and died under the ban of a verdict of guilty, who, I know, was innocent; and yet for that man there was no remedy, no relief, for the judge who tried him and presided over his case had become so impressed by the testimony and surroundings of the case that he could not hear the motion fairly; and my colleague and myself in that case had no remedy. No fresh judicial mind could be brought to hear that case and permit the law to be discussed before him free from the embarrassment caused by knowing the statements made on the trial, and the man died in the penitentiary, and his name is stained to this day as that of a convict criminal.

For what purpose is a Constitutional Convention called together if it is not to afford a relief for just such cases? And, sir, that case is not alone. These are not, I regret to say, but even rare exceptions. They are, of course, exceptions; but the law that permits one such case is a disgrace to the cultivation of the age, and I am here to raise my voice earnestly and zealously and decidedly against its being perpetuated.

I can understand that all the gentlemen in this Convention who have in the course of their professional lives been district attorneys, as I have been, feel an antipathy almost against this proposition; and why? Because they say that everybody will take a writ of error, everybody will have his appeal, and public justice

will be obstructed; but my friend from Montgomery meets that objection. He says, I want the law settled upon these cases, and therefore, in order to prevent justice being delayed, I will agree that the writ to remove the case to the Supreme Court shall not be a *supersedeas*; that is, it shall not stay judgment upon the verdict, and it shall not stop sentence unless the judge who tried the cause shall certify that it is a proper subject for review. In the name of all that is honest and fair to the parties who are charged with crime, what can there be said against that? It does seem to me, and I have thought upon the subject for years, that to state such a proposition is to present it so that every fair-minded man will at once say, "certainly, give all who are tried for an offence against the law the right to have their case considered in every possible way and by the court of final resort, provided, of course, that it shall not stay the operation of public justice." So that in the case Judge Woodward refers to, of fornication and bastardy, the only case which he seems to be able to call to his remembrance now where a man ever was acquitted who ought to have been convicted, the judgment of the court might go on and the party who was injured have the support the law requires, and when the case came to final judgment, if the court thought the verdict below was according to law, the judgment might be affirmed; but if they found it was not, I suppose my friend from Philadelphia would hardly regret that the court should say that somebody else ought to bear the responsibility and pay for that charge.

Again, take the least case, the ordinary one of assault and battery, in which a man feels that some wrong has been perpetrated against him. A man charges another with this offence, and he is found guilty of it by false accusation, by false testimony, by hundreds of ways that are known to us. Why should not the man who feels that his liberty is in danger, that his character is affected by this, have the right to go to the Supreme Court in order to have it finally disposed of, if he is willing to pay the expense and willing also to take the risk of the judge who tried the cause saying that the writ of error should be no *supersedeas*; in other words, that he shall be sentenced to pay the fine; nay, to undergo the imprisonment. While he is undergoing that sentence, if he feels that he has suffered

wrong, why shall not he or his friends have the right to appeal to the court of final resort to have his case heard and disposed of? No harm can come to anybody from allowing him that privilege, and to allow it would seem to be the most natural right in the world.

Why, sir, what becomes of the doctrine we are all in the habit of talking about and boasting about on the hustings, in conventions, in deliberative bodies, and everywhere else, that no man shall be convicted except according to law—what does that amount to if he has not the right to have the law determined by the only tribunal in the land that can determine it, the court of last resort? And yet we are going on every day trying men, convicting them, and sentencing them to disgraceful imprisonment, to the destruction of character, to the loss of liberty, without the judgment of the law; that is to say, without the judgment of the court of last resort.

I submit, Mr. Chairman, most earnestly to this Convention that in the light of the action of neighboring States who have adopted this principle, and in the light of the advancing civilization of our day, we ought to engraft this provision in the fundamental law.

Is it any answer to say that it will burden the Supreme Court with a little more work? If it does, let us give them more judges; let us give them aid to do work; but if there is to be any distinction made, let us make it against the dollars and cents, and in favor of liberty and character.

Mr. ARMSTRONG. It is with great reluctance, Mr. Chairman, that I rise to present to the Convention, very briefly, the condition of the law as it stands. If we had no other knowledge of the law of Pennsylvania than that derived from the very able remarks of the gentleman from Philadelphia, (Mr. Cassidy,) we might be led to suppose that there was a great wrong here which demanded correction at the hands of this Convention. But, sir, there is a right of appeal to the Supreme Court now. It is clear, explicit, and well defined, and it is only so limited and guarded as to prevent frivolous appeals and those which are merely dilatory and intended to obstruct the due administration of justice. Let me read to the Convention the law, to be found on page 609 of the first volume of Purdon's Digest:

"Every person indicted in any court of quarter sessions, or in any county court of oyer and terminer and general jail delivery, may remove the indictment, and all proceedings thereon, or a transcript thereof, into the Supreme Court by a writ of *certiorari* or a writ of error, as the case may require."

That is the law. Now, what is the proviso which is intended to guard against the abuse of the law?

"Provided, That no such writ of *certiorari* or writ of error shall issue, or be available to remove the said indictment and proceeding thereupon, or a transcript thereof, or to stay execution of the judgment thereupon rendered, unless the same shall be specially allowed by the Supreme Court, or one of the judges thereof, upon sufficient cause to it, or him, shown."

That is the law, and in the case I before referred to it has been ruled that if the judge has any doubt about the accuracy of the ruling of the court, it is his duty to grant an *allocatur*. Under this law as it stands, no question of law can arise in the trial of a criminal cause which may not be reviewed in the Supreme Court of Pennsylvania unless it be so frivolous that the Supreme Court would not regard it as worthy of further consideration.

Mr. CORBETT. Will the gentleman allow himself to be interrupted?

Mr. ARMSTRONG. Yes, sir.

Mr. CORBETT. Is there any bill of exceptions to the admission of evidence or to the rulings of the court, that can be taken in any criminal case, except homicide, and that is provided for by act of Assembly?

Mr. ARMSTRONG. There is not as it stands at present; and if the gentleman proposes that there shall be, then the amendment does not go far enough as it requires the aid of law for it simply defines the right and defines it in almost the language of the law as it stands now, omitting the proviso which is enacted to guard against abuse.

Mr. HUNSICKER. No, sir, I propose "the same as in civil cases."

Mr. ARMSTRONG. Does he mean by that that there is to be a bill of exceptions?

Mr. HUNSICKER. A bill of exceptions; that is what I mean exactly.

Mr. CASSIDY. We mean that, whether our words imply it or not.

Mr. ARMSTRONG. I think it will require construction to see whether it goes

to that extent. If it does, I think it goes too far. I think it is burdening the courts. It is now the constant practice to try criminals without stopping to write down the testimony and note exceptions to its admission. I believe the jurisdiction is well vested as it is now.

Mr. HUNSICKER. I wish to make a verbal correction in my amendment. I want to strike out the words "felonious homicide" and insert "except in capital cases," because it might be that a man convicted of involuntary manslaughter might desire a review.

The CHAIRMAN. The modification will be made as suggested by the delegate.

Mr. NILES. The chairman of the Judiciary Committee has read to the committee of the whole the thirty-third section of the act of 1860 and has told this committee that under and in pursuance of it there is no sort of difficulty in having proper causes removed to the Supreme Court for review. Under the act of 1860—and I merely refer to that to show an exception to the rule to which he has referred—Paul Schœppe was arrested, tried, convicted, and sentenced to death for murder. An application was made to the Supreme Court of this State for a special allowance in his case and refused. The day was fixed for the execution. Then application was made to the Legislature and I happen to know something of that, as does the delegate from Greene and the delegate from Columbia, and the Legislature passed an act of Assembly in these words:

"In all cases of murder and involuntary manslaughter, a writ of error from the Supreme Court to the court trying the same shall be a writ of right, and may be sued out upon the oath of the defendant or defendants as in civil cases."

That act was passed unanimously by both branches of the Legislature; it went to the executive chamber and was vetoed and sent back to the house in which it had originated, and one of the three bills that was passed over the executive rejection during the six years that Governor Geary held that office was this one. It became a law. A writ of error was awarded; the case was re-tried, and he was discharged from the court without ever swearing a witness in his behalf, and Paul Schœppe lives to-day by virtue of it. Now I submit to this committee that here is a case where a writ of error was refused; and if it was right in this case, if this act of Assembly saved an innocent man in

this case, why should it not be awarded in all?

Mr. Chairman, I am in favor of the amendment of the delegate from Montgomery. I am one of those who could never see the reason why in a case involving five dollars and thirty-four cents a writ of error should be a writ of right, that a man having such a controversy should have a right to have it adjudicated by the court of highest resort in the Commonwealth, whereas in a case involving his reputation, the reputation of his family and his own personal liberty, he must go to the Supreme Court and obtain a special allowance before he can have it adjudicated.

I hope this amendment will prevail. At least for one it will receive my hearty approval.

Mr. KAINE. Mr. Chairman: I desire to correct a statement of the gentleman from Tioga in regard to the Paul Schœppe case. My recollection of it was this: The Legislature passed a law authorizing the Supreme Court to take this kind of jurisdiction over it and the Supreme Court decided that it came too late and refused to do it. Persons then went to the Legislature and got the Legislature to pass a law authorizing the court to grant a new trial, and the new trial was granted, and on the second trial the man was acquitted. That is my recollection. ["That is right."]

The CHAIRMAN. The question is on the amendment of the delegate from Montgomery (Mr. Hunsicker.)

The amendment was agreed to.

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

The section as amended was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section eleven as follows:

SECTION 11. The judges of the Supreme Court, 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 proceedings to be brought before them and right and justice be done.

Mr. WORRELL. 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 commit-

tee 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 to-morrow.

LEAVE OF ABSENCE.

Mr. WOODWARD. I ask for leave of absence for one week from to-morrow for myself, and I beg to say a word in this connection. I submitted to-day the report of the Committee on Private Corporations. I said to my colleagues on my

committee that I was obliged to be away, but I do not want the consideration of that report to be delayed one hour in consequence of my absence if the Convention should find it convenient to take up the report whilst I am gone, my colleagues will attend to it and it is not to be delayed on account of my absence. I make this explanation to the Convention.

Leave of absence was granted.

Mr. EWING. I move that we adjourn.

The motion was agreed to; and (at five o'clock and forty-eight minutes P. M.) the Convention adjourned.

## NINETY-SIXTH DAY.

FRIDAY, *May 9*, 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.

## LIMITATION OF DEBATE.

Mr. J. R. PURVIANCE. Mr. President: I rise to offer a resolution at this time, which I hope will be adopted by the Convention. I offer it with a view of economizing time, and I think the Convention perhaps by this time are satisfied that the debates have been protracted beyond what is necessary. We should be careful not to lose the public confidence, nor to prejudice our work before the people in advance by too much discussion and by a too protracted session. The resolution under which we have been working since the third of March last limited the length of speaking at any one time on each proposition to twenty minutes. The motion was made by Mr. Mann of Potter to fix the time at fifteen minutes, and on motion of Mr. Darlington of Chester "fifteen minutes" was stricken out and "twenty minutes" inserted, thereby fixing the period at twenty minutes instead of fifteen. Subsequently, on the thirtieth of April that resolution was modified by a motion of the gentleman from Columbia, (Mr. Buckalew,) not changing the time but allowing a gentleman to continue upon leave being granted by two-thirds of the committee of the whole.

Now with the view of economizing time in this respect and on account of the necessity of seeing some end to the work of this Convention at this time, I think we are prepared to pass the following resolution which I now offer:

*Resolved*, That hereafter, when reports of committees are under consideration in committee of the whole, no delegate shall speak longer than ten minutes at one time, nor more than once on the same proposition unless by unanimous consent.

The resolution was read twice and considered.

The PRESIDENT. The Chair will suggest that the phraseology will be improved, if it be so changed as to refer to "articles reported by committees." Shall the modification be made?

Mr. J. N. PURVIANCE. Yes sir.

The PRESIDENT. By unanimous consent the resolution will be so modified. Shall unanimous consent be given? ["Yes."] It is so modified.

Mr. ALRICKS. I would only suggest that the resolution be postponed until a gentleman who has great interest in it is present. [Laughter.]

The PRESIDENT. Does the gentleman from Dauphin make a motion?

Mr. ALRICKS. No, sir; only a suggestion.

The PRESIDENT. The question is upon agreeing to the resolution.

Mr. HARRY WHITE. Mr. President: I, for one, design to vote against this resolution. It occurs to me that we are getting along well enough under the present system. I call the attention of the Convention to the fact that within the last three days there has not been an extension of the time of one delegate upon the floor; and I apprehend that there will be no occasion for protracted debate in committee of the whole on any report after the pending judiciary article is disposed of. Yesterday it was manifest to the committee of the whole that there were questions of detail under consideration that required occasional extensions and the indulgence was given to members upon the floor, to speak more than once, not at any length, but for the purpose of merely making a few observations on matters regulating the appointment of prothonotaries, matters regulating the question of allowing writs of error and appeals in criminal cases, and these little matters of detail that will not occur upon the report of any other committee yet to be considered. Then in view of the fact that within the last three days of this very important report no extension of time has

been asked for, no abuse of the valuable time of the Convention has been committed, I trust that we shall not alter the rule as it is at present understood. We, but the other day, altered it to meet the emergency then presented, and that alteration still leaves the whole question in the power of two-thirds of this body. I trust then that we shall not pass this resolution at this time.

Mr. LILLY. I hope the resolution will be passed. I should be very willing to have it modified in one respect; that is: To allow no more than one speech to a member on the same subject, and I should be very willing to have the gentleman from Butler make that modification. As far as I am concerned, I believe the resolution ought to be passed, or something like it. I want to remind the chairman that the rule has not been adhered to at all. Gentlemen have spoken five or six times and no objection been made, and I presume there will be no objection made judging from such exhibitions as have taken place during the past two or three days.

The gentleman from Indiana says that hereafter there will be no debate beyond the time. Then there will be no harm in this resolution; it will not hurt him or anybody else. I think it is necessary that this resolution or something like it should pass, not only for the committee of the whole, but in the Convention on the second reading something of the same kind should be adopted if we ever expect to get away from here. With the speed we are making on this judiciary report, it appears to me it will take six years from now before we get through. I do not complain especially of debate on this report. I am not a lawyer and probably am not so particularly interested in the debate as some of the rest of the gentlemen on the floor. I have been sitting back and listening to the discussion, but I presume if I were a lawyer I would be more interested in this respect. But I am in favor of the resolution.

Mr. PATTON. I think it unwise to adopt such a resolution at this time. After the report of the Committee on the Judiciary shall be disposed of, I shall be in favor of such a resolution.

Mr. CARTER. I dissent entirely from the views of the gentleman from Indiana and especially from the correctness of the remark he has made that in his opinion we are getting along well enough. I do not understand exactly what is meant by that expression. It is a somewhat indefi-

nite term. Most assuredly sir the work of this Convention is being protracted beyond anything that we formerly supposed its necessary continuance, and I believe it is mainly from this latitude that is allowed to gentlemen to speak. I do not think we are getting along so well that there is any cause for exultation or congratulation or anything of the kind as the gentleman supposes. I believe that we shall be sitting here when the thermometer is among the nineties; and already I find many gentlemen looking towards the postponement of our work beyond the first of July.

I do hope that this resolution will pass. I am convinced every day by observation that all it is necessary to say upon one particular point, divided as these reports are into sections, can be said by the process of condensation in ten minutes, and that that is the only way that will bring us to any reasonable termination of the sessions of this body.

The gentleman from Indiana further says that the present rule permitting two-thirds to allow a speaker to go on, is a sufficient check. I think it practically amounts to nothing, because there is not moral courage enough, if I may say so, in this body to promptly find one-third to rise and object to any man speaking, if he chooses to go on for an hour. I have no idea of permitting it if I can help it. It must be a rule without any limitation or any qualifications if it amounts to anything at all. I hope that gentlemen will feel the necessity of getting through with our work. It may chance to be that some gentleman will find difficulty in concentrating all he has to say upon one subject in the time proposed, but it will be better for the general good that such remarks should be arrested somewhat prematurely occasionally than to go on in the way we have been going on, and perhaps even in that case there will be some opportunity offered to the gentleman to conclude the train of his thought if really important. I know that this measure is absolutely necessary to enable us to get through with the work of this body in any reasonable time.

Mr. BOWMAN. I move to amend the resolution by striking out "ten" and inserting "fifteen."

The PRESIDENT. The question is on the amendment of the gentleman from Erie.

Mr. CORSON. Mr. President: I feel that I have a right to talk on this ques-



tion, because I have never yet had my time extended and have occupied but very little of the time of the body. Not being the chairman of any committee, I have never thought it my duty to make any long speech; but I am sure that the adoption of such a rule as this will only be an impediment in our progress. It will be in the way all the time; and I agree with the gentleman from Indiana that no such limitation would now be wise, but would be very unwise. I know that the oldest member of this Convention is prepared to speak upon an important question, which will come up when we come to consider the report of the Committee on Private Corporations, which speech will take him half an hour or three-quarters of an hour to deliver; and I know it would be profitable to us to listen to it, much more so than to have him cut off in the midst of the discussion and a motion to extend his time and all that sort of nonsense. It seems to me that the good sense of the members of this Convention will teach them to make short speeches, and especially now as time is becoming precious and the work is matured. I do hope, therefore, that no such rule as this will be adopted. I adhere to the old twenty minute rule.

Mr. CARTER. Will the gentleman permit me to explain?

Mr. CORSON. Yes, if you do not take over ten minutes.

Mr. CARTER. I presume the gentleman from Montgomery refers to the gentleman who usually sits alongside of me, (Mr. Carey.) That matter has been pre-arranged already; it is understood that prior to the commencement of his speech, under the peculiar circumstances of the case, it being a collection of statistics in great measure, his time will be extended by special resolution passed to that effect, and he is entirely satisfied with that.

Mr. CURRY. I think we are consuming time unnecessarily, and I therefore move the postponement of the resolution for the present.

On the motion to postpone, the yeas and nays were required by Mr. H. W. Smith and Mr. Carter, and were as follow, viz:

Y E A S.

Messrs. Addicks, Alricks, Armstrong, Bailey, (Huntingdon,) Baker, Bannan, Bartholomew, Bowman, Brown, Corbett, Corson, Curry, Dunning, Elliott, Ellis, Ewing, Fulton, Hall, Hanna, Hay, Hemp-hill, Heverin, Hunsicker, Kaine, Minor,

Palmer, G. W., Patterson, D. W., Patton, Runk, Walker, Wetherill, J. M., Wherry, White, Harry, White, J. W. F., Worrell and Meredith, *President*—36.

N A Y S.

Messrs. Achenbach, Bardsley, Beebe, Bigler, Black, Charles A., Brodhead, Broom-all, Buckalew, Campbell, Carter, Clark, Cochran, Craig, Davis, De France, Edwards, Funck, Gibson, Gilpin, Hazzard, Horton, Lawrence, Lilly, Long, MacCon-nell, M'Camant, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Metzger, Niles, Purman, Purviance, John N., Smith, Henry W., Stanton, Struthers, Temple, Turrell, Van Reed and White, David N.—42.

So the motion to postpone was not agreed to.

ABSENT.—Messrs. Ainey, Andrews, Baer, Bailly, (Perry,) Barclay, Biddle, Black, J. S., Boyd, Carey, Cassidy, Church, Collins, Cronmiller, Curtin, Cuyler, Dal-las, Darlington, Dodd, Fell, Finney, Gowen, Green, Guthrie, Harvey, Howard, Knight, Lamberton, Landis, Lear, Little-ton, MacVeagh, Mitchell, Mott, Newlin, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Pughe, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Wetherill, Jno. Price, Woodward and Wright—54.

Mr. HAY. If it is in order, I desire to move an amendment to the original resolution striking out the word "unani-mous" and adding to the resolution "two-thirds of the members present;" so that the resolution will read, "unless by con-sent of two-thirds of the members pres-ent." I move the amendment simply because I do not think one member should have it in his power to prevent all the rest of the members of the Convention from hearing another if it is their pleasure to do so. That is the only objection I have to the resolution; otherwise I should be in favor of it.

The PRESIDENT. The question is now upon striking out "ten" and inserting "fifteen" before the word "minutes."

Mr. J. N. PURVIANCE. The Constitu-tional Convention of the State of Illinois, at the outset of their proceedings, adopted a ten minute rule. It worked well. The result is that we have the debates of that Convention in two volumes whilst already our debates are swelled up to nearly four volumes of seven hundred pages each. If

we are to progress in the same way, there will be perhaps twelve or fifteen volumes of the debates. This resolution may shorten them one-half, and I beg to remind gentlemen that our constituents are very much interested in what we do, but not so much in what we say.

Mr. LAWRENCE. Mr. President: After all, on this question of limiting debate, I have found that very little good can be attained unless members will appeal to their own common sense. It so happens in almost all deliberative bodies that there are a few men who must always do the talking and they take it for granted that nobody else understands a question until they illuminate and discuss it. I recollect very well when in Congress it was proposed to impeach Andrew Johnson and the whole country was anxious that several members of the Committee on Impeachment should refrain from speaking and end the contest, one gentleman said: "The Senate cannot understand this question until they hear *my speech*." [Laughter.] It is a good deal so here. I like to hear gentlemen talk; I do not talk much myself, especially on this question now before the committee of the whole, because I do not pretend to understand it, but many think we cannot understand the various questions submitted to us until they have explained them.

But after all, you must leave this subject to the common sense and discretion of the members. If members are disposed to rise from time to time and talk on trivial questions that can be voted on in two or three minutes, and that must only be voted down, no good can result from such a resolution as this. I have seen gentlemen offer amendments that did not get three votes and yet they had spoken fully in their favor or secured some other member of the Convention to do so. If gentlemen will only exercise their common sense on these questions, and apply their minds to the subjects before the House, so as to understand something about them when they are offered, and if members will only reflect that gentlemen here, even though they may not be lawyers, can apply their common sense to the questions under consideration and determine them for themselves, we shall get along more rapidly. I agree with my friend from Lancaster (Mr. Carter) that we shall be here until August, certainly if we expect to finish our work, unless we do something to limit

debate. I do not know that the resolution will do it even if it is adopted. Some good friend like my friend from Lycoming, (Mr. Armstrong,) my friend from Chester, (Mr. Darlington,) or my friend from Fayette, (Mr. Kaine,) will want an extension of time. Well, who is immodest enough and discourteous enough to say that he shall not have an extension? We will grant it, although we may be satisfied on the question pending and ready to vote. It is impossible to prevent a delegate from speaking, especially when he feels that he ought to speak, or that his constituents expect him to speak, and that the country will not be satisfied unless they hear him. [Laughter.] Then, sir, it is a source of gratification to many members to see their names in print in the papers every day as having offered propositions to amend the Constitution of the State of Pennsylvania or as having spoken upon them. I do not want to prevent any such desire from being gratified, but I want to get home, if I can, by the fourth of July and hence I will vote for this proposition, though I do not think it will amount to very much.

Mr. TURRELL. I like the speech of the gentleman from Washington very much but I would like to ask the gentleman how he can expect gentlemen to exercise that which they do not possess. [Laughter.]

On the question of agreeing to Mr. Bowman's amendment, the yeas and nays were required by Mr. Harry White and Mr. Bartholomew and were as follows, viz:

#### Y E A S.

Messrs. Alricks, Armstrong, Bailey, (Huntingdon,) Baker, Bannan, Bartholomew, Beebe, Biddle, Bowman, Broomall, Carey, Clark, Cochran, Corson, Craig, Curry, De France, Dunning, Ellis, Ewing, Fulton, Hall, Hanna, Hemphill, Hovrin, Hunsicker, Kaine, Mac Veagh, McCulloch, Mann, Mantor, Minor, Niles, Palmer, G. W., Patterson, Patton, Runk, Sharpe, Wetherill, J. M., Wherry, White, Harry, White, J. W. F., and Worrell—43.

#### N A Y S.

Messrs. Achenbach, Addicks, Bardsley, Bigler, Black, Charles A., Brodhead, Brown, Buckalew, Campbell, Carter, Cassidy, Corbett, Davis, Edwards, Elliott, Funck, Gibson, Gilpin, Hay, Hazzard, Horton, Lawrence, Lilly, Long, MacConnell, M'Camant, M'Clean, M'Murray,

Metzger, Newlin, Purman, Purviance, John N., Simpson, Smith, Henry W., Stanton, Stewart, Struthers, Temple, Turrell, Van Reed, Walker, White, David N. and Meredith, *President*—43.

So the question was determined in the negative.

ABSENT.—Messrs. Ainey, Andrews, Baer, Bailly, (Perry,) Barclay, Black, J. S., Boyd, Church, Collins, Cronmiller, Curtin, Cuyler, Dallas, Darlington, Dodd, Fell, Finney, Gowen, Green, Guthrie, Harvey, Howard, Knight, Lamberton, Landis, Lear, Littleton, Mitchell, Mott, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Pughe, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Wm. H., Wetherill, Jno. Price, Woodward and Wright—56.

Mr. J. W. F. WHITE. Mr. President: I think it is unreasonable that one person should have the power of preventing the continuance of remarks by a member though all the rest of the Convention might be willing to extend his time a few minutes. I therefore move to strike out "without unanimous consent" and insert "when five members object."

The PRESIDENT. The question is on the amendment of the gentleman from Allegheny.

The amendment was agreed to, there being on a division ayes fifty-three, noes twenty-three.

The PRESIDENT. The question is on the resolution as amended.

Mr. J. N. PURVIANCE. I ask for the yeas and nays.

The PRESIDENT. The Chair will observe that he did not notice in the language of the resolution the words "shall not speak more than once." That is the rule of the House now, and it is unnecessary to be introduced here; and if introduced, the resolution must lie over one day.

Mr. J. N. PURVIANCE. I will modify the resolution by striking out those words.

The PRESIDENT. Shall the words be stricken out by unanimous consent? ["No!" "No!"] Consent does not appear to be given. The resolution must either be amended or lie over one day.

[Several Delegates. "Let it lie over."]

Mr. D. N. WHITE. I move that the words "shall not speak more than once" be stricken out.

The PRESIDENT. The question is on the amendment just moved by the delegate from Allegheny.

The amendment was agreed to.

The PRESIDENT. The question is on the resolution as amended, which will now be read for information.

The CLERK read as follows:

"Resolved, That hereafter when articles are under consideration in committee of the whole, no delegate shall speak longer than ten minutes at one time when five members shall object."

The PRESIDENT. The question is on the passage of this resolution.

The yeas and nays were required by Mr. J. N. Purviance and Mr. Bartholomew and were as follows, viz:

Y E A S .

Messrs. Achenbach, Baker, Bardsley, Beebe, Bigler, Black, Charles A., Brodhead, Broomall, Brown, Buckalew, Campbell, Carey, Carter, Cassidy, Cochran, Craig, Cuyler, Davis, De France, Edwards, Elliott, Hanna, Hay, Hazzard, Horton, Lawrence, Lilly, Long, MacConnell, M'Camant, M'Clean, M'Culloch, M'Murray, Mann, Metzger, Niles, Purman, Purviance, John N., Reynolds, Smith, Henry W., Stanton, Struthers, Turrell, Van Reed, Walker, White, David N., White, J. W. F., and Meredith, *President*—49.

N A Y S .

Messrs. Addicks, Alricks, Armstrong, Bailey, Jno. M., (Huntingdon,) Bannan, Bartholomew, Biddle, Bowman, Clark, Corbett, Corson, Curry, Dunning, Ellis, Ewing, Fulton, Funck, Gibson, Gilpin, Hall, Hemphill, Heverin, Hunsicker, Kaine, MacVeagh, Mantor, Minor, Newlin, Palmer, G. W., Patterson, D. W., Patton, Runk, Sharpe, Simpson, Stewart, Temple, Wetherill, J. M., Wherry, White, Harry and Worrell—40.

So the question was determined in the affirmative.

ABSENT.—Messrs. Ainey, Andrews, Baer, Bailly, Jos., (Perry,) Barclay, Black, J. S., Boyd, Church, Collins, Cronmiller, Curtin, Dallas, Darlington, Dodd, Fell, Finney, Gowen, Green, Guthrie, Harvey, Howard, Knight, Lamberton, Landis, Lear, Littleton, Mitchell, Mott, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Pughe, Purviance, Sam'l A., Reed, John R., Reed, Andrew, Rooke, Ross, Russell, Smith, H. G., Smith, Wm. H., Wetherill, Jno. Price, Woodward and Wright—43.

## ORDER OF BUSINESS.

Mr. BIGLER. With your consent, Mr. President, I ask the attention of the Convention for about three minutes. I hold in my hand a resolution as to the order of business which I had intended to offer; but at your suggestion, for the reason that I explained to you that it was for the purposes of notice that I prepared it, I shall not offer it, but only occupy that privilege which you have given me to state its purpose.

The import of the order is that on Tuesday next, setting aside all other business, the Convention will proceed to the consideration of amendments relating to the legislative department of the government and shall continue the consideration of that subject until it is completed. My reason for this suggestion, and for asking the reflection of the members upon it, is that I thought I could see in my quiet home before I came here a great obstacle in the way of the progress of this Convention growing out of a want of confidence in the law-making power. I think I see here every day that we are dealing with some matter of detail which every member would say should go to the Legislature but for the want of confidence in that body as it stands now. Having read carefully the proposed amendments upon legislation and knowing something of what is required in regard to the legislative body itself, I am quite confident that this Convention intends to do with reference to the Legislature that which will go very far towards restoring it in the confidence and esteem of this body. When we have provided a legislative body in which we have confidence, can we not lay down certain great leading truths in the Constitution and allow the Legislature to carry them out? Without that we shall have a Constitution in such detail that the people of this State never will accept it. However, sir, as you suggested, instead of offering this resolution, I give notice that on Tuesday next, or about that time, I shall move as an order of business, that the Convention postpone everything else and complete the article on the legislative department first.

## LEAVES OF ABSENCE.

Mr. PATTON. I ask leave of absence for Mr. H. W. Palmer for a few days from to-day.

Leave was granted.

Mr. DUNNING. I ask leave of absence for a few days from to-day for Mr. Mott.

Leave was granted.

Mr. BEEBE. I ask leave of absence for Mr. Dodd for a few days.

Leave was granted.

Mr. D. N. WHITE. I am requested by Mr. Darlington to ask leave of absence for him for this day.

Leave was granted.

Mr. COCHRAN. I ask leave of absence for myself for a few days from to-day.

Leave was granted.

## DAILY SESSIONS OF THE CONVENTION.

Mr. HEMPHILL. I offer the following resolution:

*Resolved*, That on and after Monday next this Convention will meet at ten o'clock A. M. and adjourn at four P. M.

On the question of ordering the resolution to a second reading a division was called for which resulted, ayes twenty-seven, less than a majority of the quorum. So the resolution was not ordered to a second reading.

## PAYMENT FOR CONVENTION PRINTING.

Mr. HAY. I present a report from the Committee on Accounts.

The CLERK read the report as follows:

"The Committee on Accounts and Expenditures of the Convention respectfully report:

"That on the eighth day of March last a resolution then before the Convention, concerning the accounts of Benjamin Singerly, printer, was 'referred to the Committee on Accounts and Expenditures, 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.' [See Journal, page 403.] Under this instruction, on the twenty-second day of March, the committee reported 'that it was not possible to report what exact amount was then due the printer on his contract with the Convention, not having been able to procure such specific estimates, statements, and information as it would be necessary to have in order to make such report,' and accompanied the report with a resolution authorizing the payment to the printer on account of printing done and books furnished, of the sum of five thousand dollars, [page 448.]

"The committee now further reports: That the printing which the Convention has deemed to be necessary for the proper transaction of its business and all other pro-

per expenses of the body, in so far as they have been settled up to this time, have been settled and paid in accordance with the provisions of the seventh section of the act of Assembly, approved April 11, 1872, under which this Convention was elected. The latter clause of this section is as follows: '*Warrants for compensation of members and officers, and for all proper expenses of the Convention, shall be drawn by the President, and countersigned by the chief clerk, upon the State Treasurer for payment.*'

"The printing of its Debates and Journals, of its reports and other papers, is undoubtedly a "proper expense" of the Convention, and legitimately paid for as such; and the only mode pointed out by law for the payment of *all* such proper expenses was that provided in this section, until the passage of the act of Assembly, approved the ninth day of April, 1873, entitled 'An Act to provide for the ordinary expenses of the government,' &c., the general appropriation act, the fifty-ninth section of which law is as follows:

"For the pay of the expenses of the Constitutional Convention, including the pay of the members, clerks, and officers thereof, *and the printing therefor*, the sum of five hundred thousand dollars, or so much thereof as may be necessary, *to be settled by the Auditor General*; and the amount of the salaries of the members and clerks, and the pay of the officers and employees thereof, shall be fixed by the said Constitutional Convention, and the money shall be paid by the State Treasurer, on the warrant of the President of the said Convention, countersigned by the chief clerk of the Convention; and any statute inconsistent herewith, be and the same is hereby repealed."

"The committee considers that the provisions of this act are in some particulars, and in so far as they relate to the settlement of the accounts for the printing of the Convention, inconsistent with the latter clause of the seventh section of the act of April 11, 1872. That section provides a mode of payment of *all* the 'proper expenses' of the Convention, while the law of 1873 seems to take the settlement of the accounts for printing out of its comprehensive purview and to provide a particular means for their settlement, viz: by the Auditor General. The two acts should of course be construed together and effect be given to all their parts if by any reasonable construction this may be

done; and the committee does not perceive how any sensible effect other than that now reported can be given to the language of that part of the act of 1873 which relates to the settlement of the accounts for the printing of this Convention. If the accounts for printing can legally be settled only by the Auditor General, then no warrants can be drawn for their payment by order of the Convention, or if drawn would not be legal vouchers to the State Treasurer for the payment of money.

"In order that there might be a determination of the question of what construction must be given to these laws, the following resolutions are respectfully reported for the action of the Convention:

"*Resolved*, That no warrants be drawn for payments to the Printer of the Convention.

"*Resolved*, That a copy of this report and of the action of the Convention thereon, be transmitted to the Auditor General for his information; and that the Auditor General be also informed that Benjamin Singerly has been already paid the sum of five thousand dollars on account of printing done and books furnished for the Convention."

The resolutions were ordered to a second reading. The first resolution was read a second time, as follows:

"*Resolved*, That no warrants be drawn for payments to the Printer of the Convention.

Mr. BUCKALEW. Before that resolution is voted upon I should like to have the last act of Assembly read again, if the Clerk will be kind enough to refer to it

The CLERK read as follows:

"For the pay of the expenses of the Constitutional Convention, including the pay of the members, clerks, and officers thereof, and the printing therefor, the sum of five hundred thousand dollars, or so much thereof as may be necessary, to be settled by the Auditor General; and the amount of the salaries of the officers and clerks and the pay of the officers and employees thereof, shall be fixed by the said Constitutional Convention, and the money shall be paid by the State Treasurer on the warrant of the President of the said Convention, countersigned by the Chief Clerk of the Convention; and any statute inconsistent herewith be, and the same is hereby, repealed."

The resolution was adopted. The second resolution was read the second time as follows:

*Resolved*, That a copy of this report and of the action of the Convention thereon, be transmitted to the Auditor General for his information; and that the Auditor General be also informed that Benjamin Singerly has been already paid the sum of \$5,000 on account of printing done and books furnished for the Convention.

Mr. BUCKALEW. Mr. President: I have great doubt about that legal construction given to the act of 1873, by which all power and control are to be taken away from this Convention over the subject of payment for the printing, the ascertainment of the amounts, and the checking of any abuse. I do not like to part with that power or to declare that we do not hold it, without a little further reflection. As I understand, the construction the committee have given to the law of the last session is that the whole matter of settling the accounts of the public printer are transferred to the office of the Auditor General—the Convention is to have no supervision over it. I do not think that was intended by the Legislature. What I suppose was intended by the Legislature was this: That, in addition to any supervision which this Convention might exercise over its own printing, the accounts should pass through the Auditor General's office and receive its sanction before there was any payment. That I understand to have been the intention of the law, and it was a very proper one in view of the printing acts which to a certain extent we accepted in letting our public printing. It was the view of this Convention that we were not bound at all by the printing laws so far as regarded the allotment of the printing to Mr. Singerly, or so far as regarded the terms and conditions upon which he should perform it; and that authority which the Convention supposed it had, I do not think it is expedient for us to surrender at this time without more reflection. I therefore move that the further consideration of this subject be postponed for the present.

The PRESIDENT. The Chair will observe that the first of these resolutions has already been agreed to. The second resolution is now before the House.

Mr. MACVEAGH. I hope somebody will make a motion to re-consider the vote on that first resolution.

Mr. J. M. WETHERILL. I move to re-consider the vote by which the resolution was adopted.

Mr. WHERRY. I second the motion. I voted with the majority.

The PRESIDENT. It is moved to re-consider the vote on the first resolution.

The motion to re-consider was agreed to.

The PRESIDENT. The question is again on the first resolution.

Mr. MACVEAGH. I sincerely hope—

The PRESIDENT. It is moved that the further consideration of this resolution be postponed for the present. The motion is not debatable.

Mr. BUCKALEW. I withdraw that motion for the purpose of permitting the gentleman from Dauphin to make some remarks.

Mr. MACVEAGH. I only desire that the Convention shall seriously consider this matter. I am in thorough accord with the views expressed by the gentleman from Columbia. It seems to me quite improbable that the Legislature intended, and certainly very unwise for this Convention to agree to that intent even if they expressed it, that any amount of this appropriation should be paid by the Auditor General without any supervision of the accounts by this Convention.

If that construction is proper, there is no control over the expenditures of the Convention whatever. It is perfectly well known that this Convention will be held responsible for these expenditures, and it ought to be held responsible for them. We cannot put the responsibility anywhere else if we were to try, and the Legislature cannot put it anywhere else. I therefore sincerely trust that when the gentleman from Columbia renews his motion to postpone the consideration of these resolutions, that motion will be adopted. I do not say that anything would be done which would not be entirely proper; but let the duty rest where the responsibility will rest.

You remember, sir, the debate on this question when it was before the Convention originally. The gentleman from Philadelphia (Mr. Woodward) is not here; the gentleman from Chester (Mr. Darlington) is not here. Both of them notified us that this would be a very large item of expense and that the Convention would be held responsible for it, and that in the assault upon its works the expenditure for this item would be one of the chief weapons of attack. Now, if the Convention is to surrender entirely the control of these expenditures, and simply send this resolution to the Auditor General at Harrisburg, it will be made responsible before the people for matters over which it exercises no control. I trust,

therefore, that the motion to postpone, if it is renewed, will be agreed to.

Mr. BUCKALEW. I intend to move to print the report of the committee and that its further consideration be postponed; but I will withhold that motion for the present, as I observe that there are gentlemen who desire to speak.

Mr. HARRY WHITE. I have but a single observation to make. I am in entire accord with the observations of the delegate from Columbia and the delegate from Dauphin. I will read the specific matter before the Convention, for I find in the report the following extract from the fifty-ninth section of the appropriation bill of 1873:

"For the pay of the expenses of the Constitutional Convention, including the pay of the members, clerks and officers thereof, and the printing therefor, the sum of five hundred thousand dollars, or so much thereof as may be necessary, to be settled by the Auditor General."

Then follows the distinct sentence:

"And the amount of the salaries of the members and clerks, and the pay of the officers and employees thereof, shall be fixed by the said Constitutional Convention, and the money shall be paid by the State Treasurer on the warrant of the President of the said Convention," &c.

Now, it appears to me that the expression "to be settled by the Auditor General" refers to all the words preceding. The Convention will observe that for the expenses of the Constitutional Convention, including certain items, the sum of five hundred thousand dollars or so much thereof as may be necessary is appropriated. Then the general expression is as is usual in all appropriation bills, "to be settled by the Auditor General."

Mr. HAY. Will the delegate from Indiana permit himself to be interrupted?

Mr. HARRY WHITE. With pleasure.

Mr. HAY. Then I will ask the gentleman whether he does not notice that in the fifty-ninth section of the appropriation act of 1873, the clause immediately following the first clause provides the manner in which the salaries of the members and the pay of the officers and employees shall be fixed and paid, and in that way takes that matter out of the control of the Auditor General, and leaves only the accounts for the printing to be settled by the Auditor General.

Mr. HARRY WHITE. If the gentleman from Allegheny will allow me, I will explain that in a moment. My understand-

ing of the reading of this section of the appropriation bill is that it is just the ordinary clause to be found in all appropriation bills, and the expression "to be settled by the Auditor General" evidently has reference to everything that preceded. Now how are salaries and the expenses of the Legislature settled from time to time? At the close of every session, the clerks make out a warrant for the pay of members and the Speaker of each House signs it. That warrant is taken to the Auditor General for the pay of the members and of the officers and for all the expenses, and the Auditor General, upon that warrant, thus certified to, issues his warrant upon the State Treasurer. That is what the Legislature had in contemplation when they passed this law.

Allow me furthermore to say that the first part of this section was reported by the Committee of Ways and Means of the House of Representatives in making the ordinary appropriation for the expenses of the State government. The latter clause of the section was inserted in the Senate. I remember the circumstances very well, and it is not improper to refer to them now, as they are part of the history of the case. When this subject was up in the Senate, some remark was made about the salaries of the members of this Convention. I rose in my place, and desired that the Legislature would pass a clause in the appropriation bill fixing the compensation of the delegates to this Convention if it was desired that the act of 1872 should be at all changed in this regard. This caused a discussion, and my proposition was voted down after the general observation that the members of the Constitutional Convention were able and honest men and that they could be safely entrusted with this privilege themselves. This was specious but it seemed to take, and upon the heels of that remark this general clause was inserted at the end of the section, and the amount of the salaries of members and clerks and the pay of employees of this Convention was accordingly referred to this body. The language "and the amount of the salaries of the members and clerks and the pay of the officers and employees thereof shall be fixed by the said Constitutional Convention," which was put in by the Senate, had no reference whatever to any change of the preceding clause and is not at all inconsistent with it. That merely provides for the allowance to the members of this Convention to

fix the salaries for themselves and their officers as the majority may determine. But the expenses of the Convention, the printing and the other expenses, are left to be regulated by this Convention, just as by the act of 1872, which called this Convention into existence. My understanding of the proper construction of this clause is just this: The Committee on Printing or the Committee on Accounts and Expenditures of this Convention is to pass upon these accounts, then a certificate is issued in accordance therewith, and this certificate is taken to the Auditor General and upon the certificate thus issued, as the result of their investigations, the Auditor General issues his warrant upon the State Treasurer, and thus we have no conflict whatever in any of the departments of the government. The expenses of this body will be settled just as the expenses of the Legislature are—

Mr. MANN. Will the gentleman from Indiana permit an interruption?

Mr. HARRY WHITE. Certainly.

Mr. MANN. Has the President of this Convention any authority to draw a warrant upon any item of expense whatever except under that act of 1873?

Mr. HARRY WHITE. Yes, sir.

Mr. MANN. Has he any authority for doing so?

Mr. HARRY WHITE. He has.

Mr. MANN. What?

Mr. HARRY WHITE. The act of 1873 and that clause of the act of 1872 authorizing this Convention to provide for the payment of its own expenses are to be construed together. Let the Convention settle the question of the expenses that may arise in any way—the question of the account of the State Printer, the question of the accounts of the people who do the sweeping—

Mr. MANN. If the delegate will again allow me to interrupt him I ask if there is any other authority than the act of 1873 for the President of this Convention signing warrants, why is the authority put in the act of 1873? That act expressly gives sanction for the President of this Convention to sign warrants.

Mr. HARRY WHITE. That is simply a reiteration of the authority already given by the particular section of the act of 1872 with which the gentleman from Potter is familiar. These two acts are to be construed together; they are to be taken *in pari materia*; and the clause in the act of 1873 authorizing the President of this Convention to draw warrants in favor of the

members for their respective pay, is merely giving increased emphasis to the act of 1872. We have other expenses than printing. We have the little expenses incident to the funerals of members; the publication of memorial addresses, one book of which has been printed at another office than that of the State Printer; we have the expenses of taking care of the Hall; and there are incidental expenses that will have to be settled and passed upon by the Committee on Accounts and Expenditures, and when they have done this and have issued their certificate in accordance therewith, that certificate is laid before the Auditor General and he issues his warrant accordingly. That is my opinion of the meaning of the expression which has caused this report from the Committee on Accounts and Expenditures.

Mr. J. W. F. WHITE. The view which I take of this act of Assembly is quite different from that taken by the gentleman from Indiana.

Mr. MACCONNELL. If my colleague will permit me, I think the lawyers in this Hall know very well that they do not feel safe in giving an opinion upon an act of Assembly without having the act before them. We have no information of the contents of this act save by hearing it read, and no man can get as clear an idea of any document by hearing it hastily read as he can by reading it for himself. I understood that when the gentleman from Columbia (Mr. Buckalew) withdrew his motion to postpone the consideration of this subject for the present, he did so with the understanding that we should not discuss the subject any further until the report of the Committee on Accounts and Expenditures was printed on the Journals, so that we could have the act before us and determine it for ourselves. As it is, gentlemen are now going on to discuss the meaning of an act that is not before us in printed form. Therefore I renew the motion to postpone and ask the Convention to acquiesce in that motion.

The PRESIDENT. Does the gentleman from Allegheny (Mr. J. W. F. White) yield to a motion to postpone for the present.

Mr. J. W. F. WHITE. No, sir; I have the floor and desire to be heard. The Committee on Accounts and Expenditures is the proper committee of this Convention, have considered this question very carefully and upon it have made



their report which has called out this discussion. The chairman of that committee (Mr. Hay) after a very thorough investigation of this whole subject, and the whole committee have decided that under the act of Assembly of 1873 it is for the Auditor General to settle the accounts of the Printer. I apprehend that that ought to be some authority with members of this Convention, and I desire, very briefly, to call attention to the wording of the section of the last law.

If the Convention will take note, the Legislature appropriated \$500,000, or so much thereof as would be needed. What for? Why look at the fifty-ninth section of the appropriation bill and you will see: "For the pay of the expenses of the Constitutional Convention, including the pay of the members, clerks, and officers thereof, and the printing therefor, the sum of five hundred thousand dollars, or so much thereof as may be necessary, to be settled by the Auditor General." Five hundred thousand dollars are appropriated for the expenses of the Convention, the pay of the members, officers and the printing, to be settled by the Auditor General. Then the section adds: "And the amount of the salaries of the members and clerks and the pay of the officers and employees thereof shall be fixed by the said Constitutional Convention, and the money shall be paid by the State Treasurer on the warrant of the President of the said Convention, countersigned by the Chief Clerk of the Convention; and any statute inconsistent herewith be and the same is hereby repealed."

The only warrant that the President of this Convention can draw under that section, upon the fund thus appropriated by the Legislature, is for the salary of the members and the pay of the officers and the employees of the Convention. Under the section, the President has no right to draw a warrant for the pay of the printer. That is by this section fixed to be settled by the Auditor General. Why need we devote much time or thought to this? We have a contract with the printer, entered into in writing, by which the printer is bound to do the printing of the Convention and the binding for the Convention on certain definite, specific terms and conditions. No mistake can occur about that. It is simply a question as to the compensation he is entitled to under the contract—a mere matter of calculation. Cannot the Auditor General of the State make that calculation as well as any other per-

son? There is no room for any mistake or improper conduct unless we say that the Auditor General is disposed to be a rascal—a man acting under oath as much as any member of this Convention!

It is utterly impossible for us to settle the accounts of the printer fully and entirely before our adjournment. The final account of the printer must be settled by the Auditor General. It cannot be settled by the Committee on Accounts and Expenditures, or by us as a Convention. We might, it is true, during the progress of the Convention pay him in part, if we have the power to draw warrants for his pay upon the State Treasurer; but the final settlement of his account must devolve upon the Auditor General. I apprehend that it was that view of the case that induced the Legislature to pass this section leaving it to the Auditor General to settle the account of the printer upon the terms and conditions of his written contract with the Convention. I think we shall relieve ourselves of trouble and difficulty by referring it to the Auditor General under this law, and I believe that the President of this Convention has no authority to draw a warrant for the pay of the printer.

MR. HAY. Mr. Chairman: I have but one word to say on this subject in its present aspect. I do not intend now to discuss this report. The Committee on Accounts and Expenditures have prepared their report, believing it to be their duty to present their view of this question to the Convention, in order that it should be properly determined, not only for the instruction of the Committee on Accounts and Expenditures, but for the guidance of the Convention in its future action, and for the guidance of the accounting officers of the State. It is, of course, entirely immaterial to the Committee on Accounts and Expenditures what action is taken on this subject. They desire only to be instructed in order that they may do their duty intelligently in the future. They are, of course, willing to perform the duties that have been imposed upon them, however disagreeable in their nature those duties may be, and they also believe that the printer's accounts can be much more intelligently and satisfactorily settled by the regular accounting officers of the State, who are familiar with the settlement of such accounts as these and who have other accounts for public printing to settle with the same printer, than they could be settled

by a committee of this body; especially in view of this fact, that it will be impossible for the accounts of the printer to be *finally* settled by this Convention. The work cannot all be done and delivered before the adjournment of this body; and the Committee on Accounts and Expenditures certainly never will report that any money shall be paid to the State Printer or any other person, for any work done or materials furnished to this body, until the work has actually been performed or the supplies actually furnished.

The method which the act seems to point out for the settlement of these accounts is certainly a judicious one under the circumstances and one which it may be to the advantage of the State and of this Convention to adopt. I am perfectly willing, so far as I am concerned, that the course suggested by the gentleman from Columbia, (Mr. Buckalew,) or any other course which may be deemed expedient by the Convention to take shall be pursued, in order that the matter may be settled and rightly settled; but I hope that the Convention will understand that the committee were endeavoring to discharge their duty in the only possible and proper manner by presenting this report, for its information and action, and not that they desire to escape from or to shirk any duty which it might be necessary and proper for them to perform. The report is before the Convention for it to take such action upon as is deemed requisite.

Mr. BUCKALEW. Mr. President: If the gentleman from Allegheny knew as well as I do how accounts are settled in the Auditor General's office he would be very much disinclined to the conclusion which he has just stated. Why, sir, a clerk in that office before a special printing committee, of which I was chairman testified that, I think for three years, the accounts in that office of the whole public printing of the State had been examined by nobody but himself, and that he had not even read them all through; he had merely glanced them over as they were filed; no correction had ever been made; they had been taken just as they were sent in *pro forma*. These accounts in the Auditor General's office are taken as a matter of course, *pro forma*.

Mr. HAY. I should like to ask the gentleman a question, with his permission.

Mr. BUCKALEW. Certainly.

Mr. HAY. I ask the gentleman from Columbia whether he thinks his know-

ledge or the knowledge of any other man, of the manner in which accounts are settled in the Auditor General's office could affect the legal construction to be given to an act of Assembly?

Mr. BUCKALEW. No, sir, but it affects my opinion of the weight of the gentleman's argument about the high expediency of turning this matter over to the Auditor General's office. That is the effect it has on my mind. Therefore I am disposed to look very carefully into this matter to see whether this law has taken from us all power over this subject. I do not believe a word of it. My opinion is decidedly to the contrary on the construction of the law, but for the present I move to postpone this subject and that the report be printed.

The PRESIDENT. It is moved that the further consideration of the resolutions be postponed for the present.

The motion was agreed to.

The PRESIDENT. It is also moved that the report of the committee be printed.

The motion was agreed to.

#### ACCOUNTS FOR PAPER.

Mr. HAY. I desire to present a further report from the Committee on Accounts.

The report was read as follows:

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

That it has carefully examined an account of William W. Harding for eight hundred and eighty-two reams of paper furnished under his contract with the Convention, amounting to the sum of \$6,615; that the said paper has been furnished to the printer, as appears by his receipt for the same accompanying the account and is certified by him to be fully equal to the sample and to that agreed to be supplied by the contract therefor. The said account is therefore reported to be correct and should be paid.

The amount of paper now furnished is somewhat in excess of the amount actually used by the printer up to this time, but is not more than will most probably be required and used within the next few weeks. It is, of course, necessary that the printer should be supplied in advance.

The following resolution is accordingly reported:

*Resolved*, That the above mentioned account of William W. Harding for eight hundred and eighty-two reams of paper, amounting to the sum of \$6,615, be, and

the same is hereby approved; and that a warrant be drawn in his favor for the payment of said sum.

The resolution was read twice and considered.

Mr. J. M. WETHERILL. I wish to ask a question of the chairman of the Committee on Accounts. By what law are we enabled to pay the furnisher of the paper when we cannot pay the printer? I do not understand the report. The committee report that we make payment to the party who furnishes paper; and yet it is in doubt whether we can pay the printer.

Mr. BOWMAN. It is a separate contract.

Mr. J. M. WETHERILL. It is a separate contract of course, but both are made under the sanction of law, as I understand.

Mr. HAY. I will reply by saying that the act of 1872, commonly called the Convention act, provides that *all proper expenses* of the Convention shall be paid by warrants drawn by the President of this Convention and countersigned by the chief clerk, upon the State Treasurer; but the act of 1873, the general appropriation act, in my opinion, simply takes out of the provisions of that act the settlement of the accounts for the printing of the Convention, and nothing else.

The resolution was agreed to.

#### RELIGIOUS AND CHARITABLE SOCIETIES.

Mr. MANN. I am instructed by the Committee on Religious and Charitable Institutions to make a report.

The report was read as follows:

"The Committee of Religious and Charitable Corporations and Societies report that they have given due consideration to the interests and subjects proposed to be referred to the committee by the Convention, and are of opinion that the other standing committees have reported all the provisions that need to be incorporated into the Constitution of the State. We therefore feel it to be our duty to report that no additional article is needed on the subject referred to us.

"Respectfully submitted,

JOHN S. MANN,  
SAMUEL MINOR,  
CHAS. HUNSICKER,  
HENRY CARTER,  
HAMILTON ALRICKS,  
EDWARD R. WORRELL."

The report was laid on the table.

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#### THE JUDICIAL SYSTEM.

Mr. LILLY. 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. When the committee rose yesterday they had under consideration section eleven of the Judiciary article. That section will be read.

The CLERK read as follows:

SECTION 11. The judges of the Supreme Court 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 proceedings to be brought before them and right and justice be done."

Mr. KAINÉ. There is a misprint I think in this section. The words "the judges of the Supreme Court" are in the wrong place. I move to amend the section by striking out the words "the judges of the Supreme Court and," and inserting in the second line after the word "counties" the words "have like powers with the judges of the Supreme Court." That is the way it should be.

Mr. ARMSTRONG. I do not know why it should be so.

Mr. KAINÉ. That is the old Constitution.

Mr. ARMSTRONG. I know it is, and the mode of expression was changed purposely by the committee to make it more direct and explicit, that is all. The same power is preserved precisely; but we thought this an improvement on the expression in the old Constitution as being more direct and explicit.

Mr. KAINÉ. We have already given that power to the Supreme Court in the third section of this report as it is offered by the committee. That section provides:

"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 *monday* and in case of *quo warranto* as to all officers of the Commonwealth whose jurisdiction extends over the State and in

revenue cases in which the Commonwealth is a party."

That latter clause I believe is stricken out:

"They shall have appellate jurisdiction by direct appeal, *certiorari*, or writ of error in all cases as is now or may hereafter be provided by law."

There is no necessity of repeating that in this section. If amended as I propose, the section will read:

"The judges of the court of common pleas within their respective counties shall have like powers with the judges of the Supreme Court to issue writs of *certiorari* to the justices of the peace and other inferior courts not of record, and to cause their proceedings to be brought before them and right and justice be done."

If the section is adopted as it now stands, the same power will be given to the Supreme Court in two different sections of this article. I think the chairman is mistaken about this. I therefore move to amend by striking out "the judges of the Supreme Court and" in the first line and inserting in the second line after the word "counties," the words "have like power with the judges of the Supreme Court."

Mr. ARMSTRONG. The section in the present Constitution is the eighth section of the fifth article, if the gentlemen desire to refer to it. The committee after carefully considering this section thought we had improved the phraseology, made it more direct and preserved the same power. The section would seem to be necessary to avoid any possible misapprehension on the subject or any want of clear construction. The Supreme Court by the third section have appellate jurisdiction by appeal, *certiorari*, or writ of error in all cases as is now or may hereafter be provided by law; but a *certiorari* to a justice of the peace is not a writ of error; and it might be open to some question whether, without an express provision, the *certiorari* would run to justices of the peace. The old Constitution contains such a provision, and I think wisely, to avoid any doubt as to construction; and the present section as reported by the committee, I believe, is an improved phraseology, more explicit. I hope it will be adopted.

Mr. KAINE. I would like the chairman of the committee to explain this phrase in this section: "The judges of the Supreme Court and the judges of the court of common pleas within their respective coun-

ties." The judges of the Supreme Court within their respective counties shall have jurisdiction—is that it?

Mr. PURMAN. Mr. Chairman: I suppose the object of this section was to authorize the judges of the Supreme Court to issue *certioraris* to justices of the peace. Unquestionably the Supreme Court may issue a *certiorari* to bring up the record of a justice of the peace or mayor's court. Now if it is desirable to preserve such a power or to lodge it in the Supreme Court, the section ought not to be changed; and I suppose it would be well enough to leave that power in the Supreme Court although it is seldom exercised. There might be cases where it would be very proper to take a writ a *certiorari* from the Supreme Court to get an authoritative decision on a question.

The CHAIRMAN. The question is upon the amendment of the gentleman from Fayette (Mr. Kaine.)

The amendment was rejected, there being on a division ayes ten, less than a majority of a quorum.

The CHAIRMAN. The question recurs on the section.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 12. 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.

Mr. EWING. It is probably for want of information, but I am unable to see the necessity of this section. As I understand the law, in a district where there are two or more judges now, they have the power under the law to meet in banc. They certainly do so in Philadelphia and Allegheny, and I think in every other place where they have two judges. I can see no necessity for putting it in the Constitution. Then again the section reads that they "may sit in banc or in joint session for any purpose not appellate which may be authorized by law." It seems to me that that would prohibit them from sitting in banc except where they are specifically authorized to do so by law, which I do not understand to be the case at present.

Mr. ARMSTRONG. I do not attach any very great importance to this section and am not disposed on behalf of the committee to urge it; but I express simply my personal view about it. I do not believe

it is a section of any very great value. I have no objection myself that the committee shall vote it down.

Mr. EWING. I think it will merely hamper the Legislature.

Mr. ARMSTRONG. I am willing to let it go out now to save time.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 13. 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-fifth district composed of the counties of Centre, Clinton and Clearfield, one judge.

In the Twenty-eighth district, composed of the counties of Mercer and Venango, one judge.

Mr. BROOMALL. I move to strike out that section and insert the following:

"Every county containing more than forty thousand inhabitants shall constitute a separate judicial district; but any county containing a smaller number of inhabitants may, where the necessity requires it, be attached to any contiguous county.

"A probate court shall be established in every county and shall consist of a judge, learned in the law, elected by the qualified voters of the county for the term of ten years, and such clerks and other officers as shall be provided by law.

"Where the business of the courts in any district shall require less than six months of session in the year, the judge of the court of common pleas shall be the judge of the court of probate for the county in which he resides.

"The probate court shall have all the powers and perform all the duties heretofore vested in and performed by the register, the register's court and orphans' court, and by auditors appointed by such courts, and such other duties as shall be required by law."

I offer this amendment at this point, not because it has any peculiar adaptation to this place, but because I conceive the thirteenth section ought not to pass in the shape in which it is, nor probably any part of it. The part of the section as it now stands which proposes to assign additional judges to certain districts had better be left to the Legislature. I think the part that proposes to supply the additional judges for Philadelphia and Pittsburgh required by the change made thus far, can be done better and more appropriately in the schedule than in the body of the instrument, because it is a matter temporary and not permanent.

I have offered the amendment with a view of harmonizing some discordant views in the Convention if possible. There is a strong disposition to make single districts as far as possible and to make districts composed of single counties. The first paragraph of the amendment has reference to that, and it makes every county containing forty thousand inhabitants a separate district, but provides that a county that has less population than that may be attached to an adjoining county that may have more.

I have used the term "probate court" in the second branch of the amendment without any particular fondness for that term, but out of deference to the views of the gentleman from Philadelphia (Mr. Woodward) who so ably addressed the Convention yesterday. I think there should be a single court, call it orphans' court or probate court, or by whatever name you choose, that shall perform all the duties now performed by the register, the register's court and the orphans' court, and also by auditors appointed by any of those courts.

I have provided in the third paragraph that where the judge of the court of common pleas shall have sufficiently little business in that court to enable him to do

it, he shall perform all the duties of the probate judge.

The last paragraph imposes upon the probate court the business of the register, the register's court and the orphans' court and the business of auditors. The object is to break up this business of auditors altogether, and to have their duties performed by a judicial tribunal, meeting in open session, and avoiding the complaints of the enormous expenses and inequalities of the auditor system everywhere in the State.

I trust that the Convention will adopt something of this kind either at this place or in lieu of section twenty-two, where probably it might more appropriately come. I have, however, offered it here to get rid of section thirteen, to which I am opposed, and with a view of having the Convention, if it will, pass upon the question now.

MR. ARMSTRONG. As I stated to the Convention, I think, yesterday, I am now preparing a section which I shall offer as a substitute when we reach the twenty-second section, and which will embody various suggestions already made in regard to the probate court. Whether the name be probate court or orphans' court is not perhaps a matter of any very great importance; but the section which will be proposed will embrace a direction that the auditing shall be done by the court, and without expense, as proposed by the gentleman from Philadelphia (Mr. Woodward.) I think it would not be well to take up that subject now. It will come up more appropriately, as was determined by the Convention yesterday, when the twenty-second section shall be reached.

The first paragraph of this thirteenth section, embracing the first and second lines, I think ought to be adopted now. From the third line to the end of the section would be appropriately for the schedule, and I should have no objection to allowing that part of the section to go over for the present until the whole question shall come up, when the Committee upon Schedule shall report; of course, they will take notice of the suggestions made by the committee. I shall therefore call for a division of the question.

MR. FUNCK. Will the gentleman allow me to ask a question?

MR. ARMSTRONG. Certainly.

MR. FUNCK. What objection is there to leaving this matter to the Legislature? There are some counties situated like

Lebanon, for instance, that have not quite population enough to entitle them to a judge, and that county might be attached to another quite far away which would make it very inconvenient for us. I therefore ask why it may not be left to the Legislature so that such districts may be formed as may be convenient to the people?

MR. ARMSTRONG. I agree with the gentleman in that respect, and the purpose of the first paragraph of the thirteenth section is to leave the districts as they are now, in order that the subject may appropriately be considered by the Legislature. The committee, after a great deal of examination and a great deal of effort and study found it impracticable to submit any plan for the consideration of the Convention which proposed an entire change of the districts of the State. Therefore it was that we thought it wise to provide that until otherwise directed by law the common pleas districts shall continue as they are.

With this explanation, I trust that the gentleman from Delaware will withdraw his amendment for the present, or that it will be voted down, and then I shall ask for a division of the question, making the first and second lines of the section the first division, and then ask that the rest of the section be referred to the schedule.

MR. BROOMALL. I should like to ask the chairman of the committee whether the first and second lines are really of any account at all? Until otherwise directed by law these districts will undoubtedly continue by law as they are. Is it necessary to put that in the Constitution at all?

MR. ARMSTRONG. I suppose that until they are changed by law, they would continue undoubtedly. However, it would seem to be well to put it in here, for there is a great deal of apprehension on that subject and it was deemed best by the committee to remove that apprehension by an express provision.

MR. BROOMALL. I desire to say but a few words more. If it is the wish of the Convention, or if it is the wish of the chairman that this matter be postponed until the twenty-second section comes up, I have no objection to withdrawing my amendment until that time comes.

MR. ARMSTRONG. I think it belongs more appropriately in that place.

MR. BROOMALL. I have offered it now in order that the attention of the Convention may be called to it, that it may be examined and gentlemen may see wheth-

er there is anything good in it. But as it seems to be the desire of the chairman that it shall not be offered at this place, I will withdraw it.

**THE CHAIRMAN.** The amendment is withdrawn.

**MR. BROOMALL.** Now, with respect to this thirteenth section, I do not think we ought to put anything in the Constitution that is not necessary. I agree with the chairman that if the first two lines be not the law as it stands now, it ought to be declared the law, and the rest of the section had better not be adopted. But I go a little further: Inasmuch as the first two lines are not necessary, they had better not be left in. I always go for striking out an unnecessary word or an unnecessary sentence. If a word or sentence has no necessary function, we had better omit it.

**MR. KAINE.** I understand the chairman of the committee to desire to retain of this thirteenth section the first two lines: "Until otherwise directed by law the common pleas districts shall continue as they are." I think that has already been provided for, substantially in the fourth section as amended, which provides that "until otherwise directed by law the jurisdiction and powers of the courts of common pleas shall continue as at present established." I think that is about the same thing.

**MR. ARMSTRONG.** I do not know that it is important. It is substantially embodied in the fourth section, and as the main purpose of this section was to provide additional judges, which it is appropriate should be considered in the schedule. I have no objection to the section being voted down for the present.

**THE CHAIRMAN.** The question is on agreeing to the section.

The section was rejected.

**THE CHAIRMAN.** The next section will be read.

**THE CLERK** read as follows:

**SECTION 14.** 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 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 preceeding 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 the 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 office 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 may be from time to time prescribed by law.

All costs in criminal cases 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.

**MR. LILLY.** I move to amend the section in the seventh line by striking out the word "one" and inserting "two." If the committee had proposed a restriction by population on the number of these officers, I should have no objection to such a restriction; but we have some very large townships in the State where one justice of the peace would not be able to do the business. Besides that, it would make it necessary for persons to travel too far to transact business with him. In the county in which I reside, if we had a justice of the peace elected residing at one end of the township, it would render it necessary for some persons in that township to travel twenty miles to

see him. It has been suggested to me that it would be better to amend it so as to read, "not less than." However, I will leave the amendment as it is. I think, for the reasons given, it is necessary that we should have more than one justice of the peace in many townships. We have some townships in the country that do not need more than one; but the provision is not so drawn as to limit it according to population, and consequently there ought to be more than one allowed.

Mr. J. N. PURVIANCE. I was going to make the same motion that the gentleman made, to strike out "one," but I would insert "three." In many townships, two would not be sufficient. We have four in some of the townships of the county I represent. Now, if we are to limit the number in the Constitution at all, let us allow a maximum sufficient to do the business. I therefore suggest that "one" be stricken out, and "three" inserted.

The CHAIRMAN. The delegate from Butler moves to amend the amendment by striking out "one" and inserting "three."

Mr. HAZZARD. I hope this section will pass as it is. I have had some experience in this office. I do not think there is a township in this State where one justice of the peace cannot do the whole business, or three times or ten times as much. If there is such a township I should like to see one of the justices of that township and read his docket. The reason why there should not be more than one in a township is, that unless you make the office worth something, you cannot get men to take it who are worth a sixpence. Unless the business is somewhat remunerative, you will have a very poor set of justices of the peace. It would be better, in my opinion, if four townships had but one; but that might be a little inconvenient.

I was astonished to hear the gentleman from Carbon (Mr. Lilly) say that they had to go twenty miles in some of their townships to a justice of the peace. They had better divide such a township; it is too large.

If you expect to get men who are competent to fill this office, you must make it worth as much to them in the shape of fees as will enable them to buy their dockets and procure such books as will qualify them for the office. His office rent, books and blanks, necessary for him to properly administer justice will cost

about two hundred and fifty or three hundred dollars. If you make two or three or four in a township you spread it too thin, and it will amount to nothing at all. You cannot get men who will take the trouble to exercise the duties of this office where they have nothing to do, as will be the result when business is divided among so many. I have no doubt that this report will be very much bettered if there is but one justice in a ward and one in a township. If there are three in any of our townships they will not be able by their fees to procure any of those books, or at least very few of those which are necessary for the proper administration of justice and to enable them to adjudicate the cases with any intelligence whatever. I think the Convention will make a great mistake if they create too many of these officers. While it may be somewhat convenient to have justices of the peace very handy, at the same time you are depreciating the quality of the men you put in. In our county you cannot get a farmer, if there are three or four justices allowed in a township, to take the trouble of the office upon him if you divide the business between three or four justices of the peace.

Mr. BOWMAN. Mr. Chairman: I had proposed to offer an amendment substantially in accordance with the one offered by the gentleman from Butler; but as that amendment is offered I will not do it. I will, however, make a suggestion to him. The amendment that I proposed would precede the commencement of the section as it now is by inserting "until otherwise directed by law two justices of the peace and aldermen shall be elected," &c. The amendment offered by the gentleman from Carbon is to strike out "one" and insert "two," and the amendment of the gentleman from Butler is to strike out "two" and insert "three."

Mr. ARMSTRONG. If the gentleman will give way to me for one moment, I propose to make a suggestion. The fourteenth section is divided into four distinct paragraphs, and I think we shall save the time of the Convention and advance more rapidly and more certainly if we take it up by paragraphs. ["Agreed."] I ask therefore that, by common consent, debate and amendment be limited to the paragraph under consideration and that we take up this section by paragraphs.

The CHAIRMAN. The Chair will remind the committee that there are two amendments now pending. The first amendment is the amendment offered by the



delegate from Carbon (Mr. Lilly) and then the amendment of the delegate from Butler (Mr. J. N. Purviance.)

Mr. ARMSTRONG. Both those amendments I believe are to the second paragraph. If they are withdrawn for the present, we shall reach them in a few minutes and have a more convenient consideration of the subject.

The CHAIRMAN. Are the amendments withdrawn?

Mr. J. N. PURVIANCE. I withdraw mine.

Mr. LILLY. I understood that the whole section was read.

Mr. ARMSTRONG. It was; but for the convenience of the Convention and to save time, I propose that it shall be taken up by paragraphs.

Mr. LILLY. If that is the case I withdraw the amendment I offered.

The CHAIRMAN. The amendments are withdrawn. The gentleman from Lycoming calls for a division of the question so that each paragraph of the section may be voted on separately. The question before the committee, then, is on the first paragraph of section 14, from lines one to six inclusive.

Mr. J. M. BAILEY. I should like to ask the ask the chairman of the Committee on the Judiciary a question. I ask whether they intend, as this section implies, to turn out of office every justice of the peace and alderman in this Commonwealth at the next election after the adoption of this Constitution.

Mr. ARMSTRONG. We can fix that in the schedule.

Mr. J. M. BAILEY. We certainly should do nothing that would be so inconsistent as to adopt this clause saying that on the third Tuesday in February, 1874, there shall be elected justices of the peace in every township and ward in the State, and then to say in the schedule that we do not mean that.

Mr. ARMSTRONG. They are to be elected when vacancies occur.

Mr. J. M. BAILEY. I beg pardon; the language is:

"Justices of the peace and aldermen shall be elected at the election to be held on the third Tuesday in February, 1874, and whenever thereafter vacancies shall occur, by the qualified electors in the several counties, boroughs and townships."

That is the way it reads.

Mr. CUYLER. I should like to ask the gentleman why not, because the good men will be re-elected and take a fair start? Where is the objection to having

an election next spring and taking a fresh start at that time?

Mr. J. M. BAILEY. Where is the benefit?

Mr. CUYLER. The advantage is that we shall get rid of doubtful men and take a fresh start. We will re-elect the good men and replace the doubtful and bad men by good ones.

Mr. NILES. Why not apply that to the common pleas judges?

Mr. J. M. BAILEY. There is another objection to that. Under our present system the justices of the peace in each county are not elected at the same time. There is an advantage in having two justices elected at different times.

Mr. BEEBE. I wish to know if the question is now pending upon whether we shall divide the section into paragraphs or whether it has been so divided and the first paragraph is up?

The CHAIRMAN. The Chair distinctly decided that a division of the question had been called for and that the section was to be voted upon paragraph by paragraph. The question now before the committee is the paragraph commencing on the first line and ending on the sixth line.

Mr. KAINE. What became of the amendments?

The CHAIRMAN. They were withdrawn.

Mr. J. M. BAILEY. I wish to state in further answer to my friend from Philadelphia that I think this Convention should not attempt to legislate out of office a single officer in the Commonwealth, as a matter of principle, if nothing else; and for that reason I am decidedly opposed to this section.

Mr. WHERRY. I desire to know, Mr. Chairman, whether the chair will decide that when these separate divisions are passed upon affirmatively or negatively, that will be a final determination of these paragraphs or whether there will afterward be a vote upon the entire section?

The CHAIRMAN. The chair decides that each paragraph stands or falls by itself. If a majority is in favor of a paragraph, it will be retained; if not it will be stricken out.

Mr. BROOMALL. Mr. Chairman: I see the object of the gentlemen who have objected to this section, and I admit that their criticism has weight in it. I think it would not be well to legislate out of office the aldermen who are in, although it would, in cases known to many of us, get

rid of bad men; but the committee had not that idea. I therefore propose to insert after the word "1874" in the third line the words "where vacancies exist." I will read the paragraph as I propose to have it amended:

"Justices of the peace and aldermen shall be elected at the election to be held on the third Tuesday in February, 1874, where vacancies exist, and whenever thereafter vacancies shall occur, by the qualified electors in the several townships, borough and wards, for the term of five years," &c.

Mr. ALBICKS. Allow me to ask a question. Would it not be better to leave that matter for the schedule?

Mr. BROOMALL. There is an objection to doing that on the part of some gentlemen here. They do not like to make the schedule seem to contradict the body of the instrument. This, I think, will cover the whole ground. Where vacancies exist the election is to take place, and then whenever thereafter vacancies occur the election is to take place. I therefore move that amendment.

The CHAIRMAN. The question is upon the amendment of the delegate from Delaware to insert the words "where vacancies exist."

Mr. BIGLER. I desire to ask the chairman of the Committee on the Judiciary, whether it would not be just as well to strike out the details from this section and refer them to the Legislature. Would not the section read better, if it simply said: "Justices of the peace and aldermen shall be elected by the people and commissioned by the government?"

That would leave out the rest, for which the Legislature can provide.

Mr. BROOMALL. The term of office should be fixed.

Mr. ARMSTRONG. The term should be fixed; but the section might be changed possibly so as to read that they shall be elected at the same time as other officers, which is already provided for.

The CHAIRMAN. Does the gentleman from Clearfield make a motion?

Mr. BIGLER. No, sir.

Mr. KAINE. I move to amend by striking out the paragraph and substituting in lieu thereof section seven of article six of the present Constitution.

The CHAIRMAN. Does the delegate from Fayette move to strike out and insert?

Mr. KAINE. I move to strike out the paragraph and insert—

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

The amendment was agreed to.

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

Mr. TURRELL. I respectfully suggest that the amendment of the gentleman from Fayette has not been read from the desk.

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

Mr. BROOMALL. It was certainly not understood that the substitute of the gentleman from Fayette was for the whole section.

Mr. C. A. BLACK. Yes, sir.

Mr. BROOMALL. I voted for the substitute because I liked it better than the first paragraph, and it would also take the place of the second paragraph; but it will not take the place of the third, fourth and fifth, by any manner of means. If that was the understanding, I move to reconsider the vote.

The CHAIRMAN. The chair will explain to the committee of the whole. The delegate from Delaware offered an amendment inserting particular words. The delegate from Fayette then moved to strike out the entire section and insert a new section.

Mr. KAINE. No, sir. Not the section, but the first paragraph.

Mr. BROOMALL. Ah! That is all right then.

The CHAIRMAN. The gentleman from Delaware will allow the Chair to state the question. The delegate from Fayette moved to strike out the paragraph and insert the seventh section of the sixth article of the present Constitution. That was not read for the information of the committee of the whole, because the Chair presumed that the committee of the whole understood it. The Chair will withdraw his decision by which the amendment was carried, and the reading of the amendment proposed by the delegate from Fayette will now be had.

Mr. KAINE. I desire to explain—

The CHAIRMAN. The delegate will allow the Chair to have the question properly stated before the House. The amendment proposed by the delegate from Fayette will be read by the clerk. It is to strike out and insert.

Mr. BIDDLE. Strike out what?

The CHAIRMAN. The entire paragraph. The substitute will be read.

The CLERK read the words proposed to be inserted.

"Justices of the peace or aldermen shall be elected in the several wards, boroughs and townships, at the time of the election of constables, by the qualified voters thereof, in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of five years. But no township, ward or borough shall elect more than two justices of the peace or aldermen, without the consent of a majority of the qualified electors within such township, ward or borough."

Mr. BROOMALL. That is right. That is in place of the paragraph and that the Committee on the Judiciary are entirely satisfied with.

Mr. ARMSTRONG. The last part of that paragraph "but no township, ward or borough, shall elect more than two justices of the peace or aldermen, without the consent of a majority of the qualified electors within such township, ward or borough," would take the place of the second paragraph of the section of the article on the judiciary, and that paragraph is not before the committee of the whole.

Mr. BROOMALL. Well, when we come to that, we can vote it down.

Mr. HAZZARD. I desire to move a further amendment.

The CHAIRMAN. That cannot now be done. The question is upon the substitute offered by the delegate from Fayette.

Mr. WHERRY. I call for a division of the substitute.

Mr. ARMSTRONG. Perhaps the whole difficulty would be adjusted by voting in the paragraph of the present Constitution just as it stands and then striking out in the second paragraph of this section the words: "The number of such officers shall not exceed one for every township, borough or ward."

Mr. WHERRY. Is the substitute of the gentleman from Fayette before the committee of the whole?

The CHAIRMAN. It is the only question before the committee.

Mr. WHERRY. Then I call for a division of the substitute.

The CHAIRMAN. Where does the delegate from Cumberland propose to divide?

Mr. WHERRY. At the word "years" at the close of the first sentence.

The CHAIRMAN. The substitute is divisible at that point, and the question will be upon the first division, which will be read.

The CLERK read as follows:

"Justices of the peace or aldermen shall be elected in the several wards, boroughs and townships, at the time of the election of constable, by the qualified voters thereof, in such manner as shall be directed by law, and shall be commissioned by the Governor for the term of five years."

Mr. EWING. I wish to ask whether if this is adopted it can afterward be amended?

The CHAIRMAN. That is in the power of the committee of the whole.

Mr. SIMPSON. I desire to simply ask one question. If the amendment now proposed by the delegate from Fayette (Mr. Kaine) should be agreed to by the committee, will it be in order then to move to strike out that portion of the amendment relating to the election of constables? Because I think the time for the election of one officer should not depend upon the time of the election of another officer. It had better be provided to elect at the time of the municipal elections.

Mr. Kaine. I would suggest to the gentleman from Philadelphia to allow the question to be settled in this form now. He can have it amended, if he desires on second reading.

Mr. SIMPSON. Very well.

The first division of the substitute was agreed to.

The CHAIRMAN. The question recurs on the second division of the substitute which will be read.

Mr. ARMSTRONG. I hope that this part of the amendment will be voted down, because it is covered by the second paragraph of the section of the report of the Committee on the Judiciary, now under consideration, and which I think is in better form.

Mr. J. M. WETHERILL. Let it be read.

The CLERK read as follows:

"But no township, ward or borough shall elect more than two justices of the peace or aldermen, without the consent of a majority of the qualified electors within such township, ward or borough."

Mr. BOWMAN. One word right here. I hope this will not be voted down. We are now upon the second division of the paragraph beginning at the word "but:"

"But no township, ward or borough shall elect more than two justices of the peace or aldermen, without the consent of a majority of the qualified electors within such township, ward or borough."

Now, Mr. Chairman, I should like to know who is to be affected by the passage of the second division of this section? The people are to be affected. The people of the rural districts throughout this broad Commonwealth know about how many justices of the peace and aldermen they desire. Why, sir, there are rural townships in this State and in the county which I in part represent upon this floor, containing one hundred square miles or more, containing inhabitants to the amount of one thousand five hundred or more; and if it becomes necessary to have two or three justices of the peace in such a township, the people want the right to have them.

This has operated very well for the past thirty-three years in this Commonwealth. The people have never elected in their districts more justices of the peace than they wanted. They have never come to this Convention either by petition or by any other means saying that the number of justices of the peace in the Commonwealth should be limited.

A gentleman has said here this morning that if you elect more than one in any particular locality, you will destroy the business. Why, sir, in the rural districts many magistrates do not make enough out of their office to buy their stationery. It is not supposed that men are going to get very rich out of the office of justice of the peace, but it is a matter of convenience to the people, and if this Convention wishes to consult the convenience of the people, to accommodate the people, you will allow them to elect at least two in every ward, in every township, in every borough, and where they think they ought to have more than two you will give them the right to elect one or two more, as they may see proper.

Why, sir, in the rural districts I want gentlemen of the committee to understand that we have no notaries public. It is a very different thing from what it is in the cities or in the boroughs. Where will you get your deeds acknowledged? It is to be done by justices of the peace in the rural districts, and by nobody else. Who will you get to administer the oath to the township officers in the rural districts? If you have but one, that man may be absent, that man may be confined to his bed by sickness, and you will put the people of that particular locality to a very great disadvantage and inconvenience. Again, he may be related to the parties, so that they will be unable in consequence thereof to try the cause before him.

I would leave this provision of the Constitution precisely as it is, retain the second division of this paragraph, and the rest of the report of the Committee on the Judiciary on this matter, I think, will be well provided for by being voted down.

Mr. BEEBE. Mr. Chairman: I feel that my duty to my constituents and to the people of the western portion of the State, particularly in the oil regions, requires me to say something on this matter.

I have before my mind at this particular time, for illustration, the township of Cornplanter that contains nearly the number of square miles my friend (Mr. Bowman) mentioned. You have all read, for they have come down even to history, of the towns of Petroleum Centre, Pioneer, Centreville, and Oil City, which were a part of that township, and called by those names before they became municipal organizations, and there was one-fourth of the entire population of Venango county within that single township, and those towns themselves contained at times from three to five thousand inhabitants and at one period many of them were some of the worst men that came from the large cities all over the land. Think what would have been their condition with only one justice of the peace for that township! You read in the papers then of the riot, bloodshed, robbery, and murder that were going on there; and think what would have been the result if we had had it fixed in the organic law of this Commonwealth, positively and irrevocably, that there should be but one justice of the peace in that township.

I desire to call the attention of the members from Philadelphia and the surrounding districts to the fact that their attempt at organic legislation seems to be governed entirely by their local view of this matter, by the surroundings here. But when we go to the quiet rural districts and consider this situation, why should this be done? For the simple reason, as my friend (Mr. Hazzard) has remarked, because one justice can make a good living. It is the old argument reiterated again of the ease of the judges and the pay of the officers. They and their rights are taken into consideration instead of the rights of the people. The necessity for more than one justice in a township is continually occurring in Armstrong county and Butler county, and unless there is an opportunity for three or four justices

of the peace in many of these places to protect society, the scenes in Venango county will be but repeated. I am aware that I am raking in the ashes of the past, that this condition of society does not now exist in our county; but it has, and may again in other parts of the State.

Mr. HAZZARD. Let me inquire whether we get good justices of the peace where they do not get enough to buy their stationery?

Mr. BEEBE. In the townships of agricultural districts where the fees do not suffice to buy their stationery, we get some honest, intelligent well-to-do farmer that takes an interest in the welfare of his neighbors and the peace of the neighborhood, and he does this business as a matter of honor, independent of the compensation. He is willing to accommodate them, to acknowledge their deeds, and consult the convenience of his neighbors, without requiring that he shall be supported by the business and that they shall go miles and miles in order to obtain the aid of a justice.

I was over in Delaware county the other day with my friend Broomall and I heard him remark that the county seat would be taken away from Media unless there was a railroad, because the inhabitants of Chester will not go five miles on a good road to the county seat to do their business. I ask men who are so accommodated to consider the simple fact that if we adopt this report of the Judiciary Committee, and strike out the associate judges, every man that has a writ to stay or a motion to make before a judge in chambers—take for instance the city of Titusville with all its business—will have to go to get to the county seat fifty-seven miles to make his motion, and in our own county thirty miles, and when the judge resided at Mercer, as he did until recently, we had to go sixty-three miles unless we had an associate judge to apply to. I am aware that this is not strictly pertinent here; but I mention it because I do not desire to take the floor again.

Now if this Convention will take these matters into consideration and think of what the welfare of this whole State requires, I am sure our wishes and purposes in the west will be consulted; but I regard this limitation as an utter subversion of the intent of the organic law to make justice cheap and speedy for the people.

Mr. TURRELL. I concur in the remarks which have been made by the delegate from Erie and the delegate from Venango

—and therefore I will not go over the same ground; but I wish to amend this section by adding thereto that part of the second paragraph beginning in the eighth line after the word "ward."

The CHAIRMAN. The Chair will remind the delegate from Susquehanna that there is an amendment to an amendment pending.

Mr. TURRELL. That had escaped my recollection. I thought the question was on the adoption of the last clause. I thought the substitute was divided.

Mr. BROOMALL. Mr. Chairman:—

The CHAIRMAN. The delegate from Delaware has already spoken on this section.

Mr. BROOMALL. I desire to say but one or two words in reply to what has been said. The committee had certainly no disposition to deprive any part of the State of justices of the peace, and if the Convention prefer the language of the old Constitution which is: "but no township," &c., "shall elect more than two without the consent of a majority of the electors," so be it. The committee have not, however, been so impressed with the desirableness of having a multiplicity of justices of the peace scattered over the State as the members of the Convention seem to be. They look upon justices of the peace as very often very great nuisances. It is within the knowledge of a great many members of the Convention that bad men get themselves elected to the office of justice of the peace and cultivate a bad reputation to get business; that is, the reputation of being always in favor of those who bring them business; and you see in too many of the county towns a kind of partnership between the constable and the justice for the purpose of making business. That rises out of our vicious system of allowing these men to pay themselves by fees out of business which they cultivate by bad behavior.

That, of course, is not characteristic of the justices generally of the State, but it is the characteristic of too many of them; and it would not be a very great slander to say that there is occasionally an alderman in the city of Philadelphia who is liable to the same charge. The committee do not incline therefore to increase these justices of the peace.

I sincerely hope that the time will come when some plan will be adopted to avoid the whole of the nuisance. When I say the whole of it, I mean the system of allowing men to pay themselves by fees out

of business that they make by bad behavior. In the absence of being able to contrive any means of doing without this for the present, the committee wish to limit the nuisance to a smaller number. If in saying "one in each township, ward, or borough" we provide for too few, make it "two;" but do not let a dozen men set up a dozen of these shops in a single township for the purpose of injuring the community by running their business to the disadvantage of the public. Let us have a limit of some kind. I therefore prefer as one member of the Judiciary Committee that we should vote down this branch of the amendment that has been offered, and when we come to take up the second paragraph of the report of the committee, strike out "one" if you choose, and insert "two," or insert "three" if necessary; but let us at least have a limit to what in many portions of the State is a very great nuisance.

The CHAIRMAN. The question is on the second division.

The division was agreed to; there being on a division, ayes forty-one, noes twenty-seven.

The CHAIRMAN. The question recurs on the amendment of the delegate from Fayette to the amendment offered by the delegate from Delaware.

Mr. EWING. I move to insert after the word "wards" in the second line the words "or districts," and for this reason: If I understand aright the sentiment of the delegation from Allegheny county, we are unanimous in wishing that the Constitutional provision shall be so left that aldermanic districts may be created in the large cities, that may consist of several wards. Even if it is not carried here, we want it so that the Legislature may authorize the creation of aldermanic districts composed of several wards, and only one alderman in a district. I ask that that be put in.

Mr. HAY. I would suggest to my colleague that perhaps an amendment of that kind would be more proper to the next to the last clause of the section, when that portion of the section relating to the alderman in cities is under consideration.

Mr. EWING. It is needed in both.

Mr. CORSON. Mr. Chairman: We were told some time ago that the office of alderman was to be abolished; and while we are perfectly willing that that office shall be abolished, we certainly do not want to strike down our country squire, for he is

a very important man. I subscribe to the remarks of the distinguished gentleman from Delaware. I think it would be better in a borough that we should increase the jurisdiction of the squire and not multiply the number.

Mr. CORBETT. I move to strike out the word "two" and insert "one."

The CHAIRMAN. The chair will remind the delegate from Clarion that that is not in order at this time, as an amendment to an amendment is already pending.

Mr. HAZZARD. I am in favor of the amendment of the gentleman from Allegheny, (Mr. Ewing,) for the reason I stated before. If, in the cities, you put large populations into districts it will give importance to the office of alderman, and furnish them means to qualify themselves for their duties. I do not agree with what my friend to the right (Mr. Broomall) stated when speaking of the character of the gentlemen who fill this office. I have had the honor to fill the office for several years myself. I am not aware that I ever knew of a case where the justice of the peace connived with the constable to make business. My opinion of these officers in my county is that they are generally men of as high character and as much integrity as any gentlemen that compose this Convention.

Mr. ALRICKS. Will the gentleman allow me to make a suggestion?

Mr. HAZZARD. Certainly.

Mr. ALRICKS. I wish to call his memory to the fact that James Madison after he had been President of the United States accepted the office of justice of the peace, and so did James Monroe.

Mr. HAZZARD. I know, Mr. Chairman, that justices of the peace are generally the butt-ends of ridicule of the lawyers of the State, because they are not intuitively, at the very instant they are elected justices of the peace, lawyers of the first character, and the people so generally esteem them, because let a person in the rural districts that never read any law in their lives be elected justice of the peace, and *instantly* the people go to them by hundreds and fifties to get a deed written and those instruments that require great solemnity and learning in the law; immediately they are supposed to be excellent in the law and the people go to them for these purposes. It may be a mistake is made, and the magistrate is blamed instead of the people who impose such duties upon him.

I cannot believe that the character of the magistrates in Pennsylvania is such as has been represented by Mr. Broomall. I do not think it is so in our section of the country, and if it is so in his county, I pity the people who cast the votes for such magistrates.

I say nothing about the aldermen in the cities, but I have heard a great deal about them by members of the cities and I have been astonished in my simplicity, coming here from the rural districts, to hear what they have said themselves in regard to these officers. I am almost afraid to stay in the city. [Laughter.] But I tell you, sir, go out into the country where I live, and there you will find these officers men of the finest character and integrity. Here and there one is elected, it is true, who ought not to be in the place and who ought not to be called to administer justice among his neighbors or transact business for them; but I do believe that if they were assembled here they would compare favorably with any set of men in this State or in any other State; and I do not like to hear the magistracy abused; they are not rascals, neither are they ignoramuses and Dogberries. They may be ignorant of the law; but in our section of the country they will compare favorably with any other men of their class.

I have been a justice of the peace and I claim to be the peer of any man. As to the talk about their conniving to make business, it is not my experience in Washington county. Why, sir, I have myself kept from the court many hundreds of cases, and I believe that my brethren in this honorable position in Washington county do not connive with constables to make business, or with anybody else, but they have in innumerable instances kept cases out of court and advised their neighbors to compromise their differences. I have an old docket which I have kept since I had the honor to fill the office. I do not know how much costs are on it; but I never charged costs where I could make compromises by it but in a very few instances indeed. I am glad that they can find over in the county of my friend to the left (Mr. Bowman) gentlemen of such high character that they will serve their country for less than will buy their stationery. Truly more Daniels are coming to judgment. If they elect me I promise them here in this open Convention of the great State of Pennsylvania that I will not take the office unless it

pays me something. [Laughter.] I quit working for nothing long ago and find I thrive better by taking the legal fees.

I said before, and I say yet, and I believe it is proper, that you must provide for remunerating these men to the extent of buying the books necessary to qualify them for the duties of justices of the peace. You may find disinterested persons up among the hemlock where the gentleman lives who will serve the people for nothing, but that disinterested patriotism does not apply to the justices of the peace in my vicinity.

The reason I am in favor of the amendment of the gentleman from Allegheny is that he proposes to create large districts and to have one alderman in each district. I believe if they had but six in this city, they would have less trouble; there would not be so many committals. You can hardly turn a corner in the city of Philadelphia without seeing an alderman's office, and they make something out of it. They make just as much fees as they possibly can. I do not know but that the remarks of Mr. Broomall might apply here; but I tell him they do not apply in Washington county. The justices of the peace there are just as good people as we have anywhere. They are generally upright and honorable men. There are some exceptions, of course, but as a general thing they are high-minded, honorable men, administering justice as they ought to do. Not infallible and therefore sometimes wrong, but honest in their intentions, and as a general rule I believe that the balance of justice hangs even in their courts.

The CHAIRMAN. The question is on the amendment of the delegate from Allegheny (Mr. Ewing.)

The amendment was agreed to.

Mr. EWING. I move now a corresponding amendment in the second division, to insert the word "district," after "ward," so as to read "one for every township, borough, ward or district," &c.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny.

The amendment was agreed to.

The CHAIRMAN. The question now is on the amendment as amended.

Mr. CORBETT. I move to amend, by striking out "two" and inserting "one," and this will allow any township that needs more than one justice, by a vote to have it. There are a great many districts

in the country that do not need more than one justice.

The CHAIRMAN. The question is on the amendment of the delegate from Clarion.

Mr. BOWMAN. I simply rise for the purpose of asking the gentleman a question. Under the provision of the Constitution as it now stands, is it obligatory on the people to elect more than one? Not at all.

Mr. CORRETT. There is generally a system by which two are elected; I know it is so throughout our whole county. Now, there are some townships, agricultural, that do not need two justices, and the truth is that it does not pay to take out the commissions and there is difficulty in getting persons to take the office when there are two elected. This will still allow townships that need more to supply them by a vote of a majority of the voters.

The CHAIRMAN. The question is on the amendment of the delegate from Clarion to the amendment.

The amendment to the amendment was agreed to, there being on a division, ayes, thirty-nine; noes, twenty-eight.

The CHAIRMAN. The question is on the amendment of the gentleman from Fayette (Mr. Kaine) as amended.

The amendment as amended was agreed to.

The CHAIRMAN. The question now is on the paragraph as amended.

[Several Delegates. "Let it be read."]

The CLERK read as follows:

"Justices of the peace and aldermen shall be elected in the several wards, districts and townships at the time of the election of constables, by the qualified electors thereof, in such manner as shall be directed by law, and shall be commissioned by the Governor for the term of five years; and no township, ward, district, or borough shall elect more than one justice of the peace or alderman without the consent of the majority of the qualified electors within such township, ward, district or borough."

Mr. TURRELL. I now move to amend, by adding that part of the second paragraph reported by the committee commencing in the eighth line after the word "ward." It refers to the qualifications entirely. The words I propose to insert here are:

"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."

Mr. BUCKALEW. The words "citizen of the United States" are surplusage. The committee will perceive that the word "elector" covers that.

The CHAIRMAN. The amendment is not in order at this time.

Mr. BUCKALEW. I hope the gentleman will modify his amendment.

Mr. TURRELL. Certainly; I have no objection.

The CHAIRMAN. The amendment is modified accordingly.

Mr. BRODHEAD. I hope that this amendment will not prevail. I think these qualifications that are fixed in the second paragraph can be safely left to the members of the Legislature. We are now getting a Constitution that is going to be about as large as Purdon's Digest itself, and I think it is time we voted to cut down some of the propositions that are offered. If we cannot leave the moral character and temperate habits of the justices of the peace to the members of the Legislature, then we might as well abolish the Legislature. I think we can leave this to them with perfect safety.

Mr. J. M. BAILEY. I wish to call the attention of the committee to the fact that the Committee on the Judiciary have not required these qualifications of the judges of the Supreme Court or of any of the judges of the court of common pleas, and yet we are asked to make a constitutional qualification for a justice of the peace that we do not make for any other branch of the judiciary.

Mr. BOWMAN. I heartily coincide with the opinion expressed by the gentleman who has just taken his seat. It is a little remarkable that these qualifications should be left out of our Constitution so far as they relate to the judges of the Supreme Court and the court of common pleas, who are to be elected by the people at large, and by men who never saw them in the wide world, and perhaps never will see them; but you go right into a district where all the people are acquainted with the candidate for justice of the peace and know him perfectly well, and know what his character is, what it has been, and what it is likely to be. It is going back upon the honesty and integrity of the people of the district. Do the people not know whom they want to



serve them in their own locality? Put such qualifications as these in the Constitution, make it as voluminous as this will, and I rather think that the ponderosity of the load will impede the velocity of the quadruped. [Laughter.]

The CHAIRMAN. The question is on the amendment of the delegate from Susquehanna (Mr. Turrell.)

The amendment was rejected.

The CHAIRMAN. The question recurs on the paragraph as amended.

The paragraph as amended was agreed to.

Mr. BRODHEAD. I move the following substitute for the third paragraph—

The CHAIRMAN. The third paragraph has not been reached.

The CHAIRMAN. The second paragraph will be read.

The CLERK read as follows:

"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."

Mr. J. W. F. WHITE. 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. J. N. PURVIANCE. I move that the House take a recess.

The motion was agreed to, and (at one o'clock and four 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 JUDICIAL SYSTEM.

Mr. LILLY. I move that the House resolve itself into committee of the whole

on the article reported by the Committee on the Judiciary.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose this morning, the question was upon the second paragraph of section fourteen, which has been read.

Mr. BROOMALL. I move to strike out the first line of the paragraph, that is, the seventh line of the section, and also the eighth line down to and including the word "and," and also in the ninth line to strike out the words "a citizen of the United States."

Mr. ARMSTRONG. I ask for the reading of the section as it will stand if amended.

The CLERK read as follows:

"No person shall be elected to such office unless he is 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."

Mr. BROOMALL. Now, Mr. Chairman, I am aware that this is the amendment that was voted down this morning after the speech of the gentleman on the other side of the House, (Mr. Bowman,) and I will here say that if the members of this Convention want justices of the peace elected who are not of good moral character, not of temperate habits, not resident within the State for three years, nor within the township, borough or ward for one year, if they want those elected who have been convicted of infamous crimes or have been removed by the judgment of a court from any office of trust or profit, the better way would be to vote down this paragraph; otherwise it would be safest to keep it in.

I know it has been asked here why it is that we do not provide similar qualifications for the judges of the courts of common pleas.

Mr. HUNSICKER. I rise to a point of order.

The CHAIRMAN. The delegate will state his point of order.

Mr. HUNSICKER. The paragraph the gentleman is discussing has been voted down.

The CHAIRMAN. The point of order is not well taken. The delegate from Mont-

gomery is mistaken. It was only certain words that were voted down.

Mr. BROOMALL. It has been urged that we ought to make similar qualifications for judges of the courts of common pleas; but we are providing for an existing evil. When men such as are desired not to be elected justices of the peace come to be elected habitually, or even sometimes, as judges of the courts of common pleas, it will be quite time enough then to put in such a provision; or, I may answer, that we have now only the question of justices of the peace before us. We may see proper to provide similar qualifications for judges when we come to that subject.

This amendment has been voted down once, but I desire to have a vote upon it again, for the sake of seeing whether, in the sober second thought of the Convention, the members desire men who have been convicted of infamous crimes to be elected justices of the peace. It is a very easy matter for a man to get himself elected a justice of the peace in a ward of this city or in a township in some of the neighboring counties by the votes of a few men whom he can control.

Mr. MACVEAGH. Will the gentleman allow a question?

Mr. BROOMALL. Certainly.

Mr. MACVEAGH. Does the gentleman really think it wise for us to negative, in the Constitution, all the qualities that we think undesirable in a justice of the peace?

Mr. BROOMALL. No, sir, I do not; but I am told that there is a power in some of the cities and in some of the counties adjoining the cities that can control the Legislature, and that can prevent the Legislature from requiring these qualifications in the law; and that being the case, I think it would be wise to put them in in such a way that they cannot be changed; but if the Convention thinks otherwise, let the members have just as bad justices as will suit their tastes.

Mr. LILLY. In some of the mining districts of Pennsylvania, improper men fill these positions. I do not know that putting this into the Constitution will prevent their being elected. If it would, I say God speed to its putting in. I have in my mind's eye a justice of the peace who was elected by the popular vote of his township, that ought to be in the State prison now, and ought to have been there for the last ten years, to my knowledge, if half what people say of him is true.

A DELEGATE. Why not prosecute him?

Mr. LILLY. I do not live in the county, and if I did I could not prosecute him. I may be told that it is a bad population that elects such a man. That, of course, is true. I do not know that this is going to remedy that. If we can prevent such a man from being elected justice of the peace by a constitutional provision, I think it ought to be done, but I do not pretend to say that it can be done.

Mr. BUCKALEW. Mr. Chairman: I should like to know how the gentleman from Delaware proposes to establish or to ascertain this qualification of good character. Is that to be determined by the Governor of the Commonwealth in issuing a commission? Is it to be determined by some court? In what manner is it to be ascertained? "A man of temperate habits." I suppose the question of the temperate habits of a man is commonly one of the most difficult inquiries upon which a court of justice or any other authority can enter. These provisions are too vague and indefinite to be incorporated in the Constitution as qualifications for the office of justice of the peace or any other.

The other qualifications required in this division, that the candidate shall have been for three years a resident of the State and shall have resided for one year in the election division in which he is chosen, can be ascertained; and the two concluding clauses are very proper, only I think they ought to be made general and apply to other officers besides justices of the peace as well as to justices. I refer to the provision that any person convicted of an infamous crime, or who shall have been removed by the judgment of a court from any office of trust or profit, shall not be a justice of the peace. Convictions of that sort and removals from office of that kind ought to constitute a general disqualification for holding office in this State. I have no objection myself to voting for these limitations, and I do not know but that they may do some good. A gentleman proposes that I shall move to strike out the words. If that is in order I will make the motion. It is not necessary, either, to have the first clause that the man shall be an elector because the Committee on Suffrage have a general clause that one of the qualifications for holding office in this State is that the person shall be a qualified elector.

Mr. MACVEAGH. Doubtless the Committee on Officers will have a general

provision upon that subject. They have, I am told.

Mr. BUCKALEW. Well, Mr. Chairman, I move to strike out these words, commencing in the ninth line: "A qualified elector of good, moral character, and temperate habits resident within the State for three years and," so that it will read: "No person shall be elected to such office unless he shall have resided within the township, borough, or ward for one year next preceding his election." I think the remainder of that paragraph may be well enough.

Mr. BROOMALL. I have no objection to that at all. I would suggest, however, to the gentleman that he let the words "temperate habits" remain.

The CHAIRMAN. The Chair will remind the delegate from Delaware that he has already spoken on this question beyond the rule. A delegate can only speak once.

Mr. BROOMALL. I was only interrupting the gentleman from Columbia. I was not aware that he had taken his seat. I desire the Chair to pass upon the question whether I have spoken to the gentleman's amendment before.

The CHAIRMAN. The amendment of the delegate from Columbia has not been received and read by the clerk.

Mr. BUCKALEW. I will state it again. I move in the ninth and tenth lines to strike out the words "a qualified elector of good moral character and temperate habits, resident within the State for three years, and," and to insert the words "shall have resided;" so as to read:

"No person shall be elected to such office unless he shall have resided within the township, borough, or ward for one year next preceding his election."

Mr. HAZZARD. It gratifies me very much that the committee appreciate the importance of this office by requiring that the justice must have resided in the State three years.

The CHAIRMAN. The question is on the amendment of the delegate from Columbia.

The amendment was agreed to; there being on a division, ayes thirty-eight; noes twenty-five.

The CHAIRMAN. The question recurs on the amendment offered by the delegate from Delaware.

Mr. EWING. I desire to offer an additional amendment to strike out the word "or" in the last sentence after the words "within the township, borough," and to

insert after the word "ward" the words "or aldermanic district."

The CHAIRMAN. That is not an amendment to the amendment. The question recurs on the amendment of the delegate from Delaware.

Mr. MACVEAGH. What is it?

The CHAIRMAN. It will be read.

The CLERK. It is to strike out the first sentence down to the word "no."

Mr. MACVEAGH. How will the section read as amended?

The CLERK read as follows:

"No person shall be elected to such office unless he shall have resided 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 and profit."

On the question of agreeing to the amendment proposed by Mr. Broomall, a division was called for, which resulted thirty-five in the affirmative, and twenty-six in the negative. So the amendment was agreed to.

The CHAIRMAN. The question recurs on the paragraph as amended.

Mr. EWING. I now ask to offer the amendment to strike out the word "or" after the words "within the township, borough," and insert after the word "ward" the words "or district."

Mr. MACVEAGH. How would the section then read?

The CLERK read as follows:

"No person shall be elected to such office unless he shall have resided within the township, borough, ward, or district 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."

Mr. HUNSICKER. Now upon the section I hope that this gratuitous insult to the people of this Commonwealth will not be put into the Constitution of the State. Who supposes for a moment that in any district the people could possibly elect a justice of the peace who had been convicted of an infamous crime.

Mr. LILLY. They have elected some who ought to have been convicted. [Laughter.]

Mr. HUNSICKER. Why should we put in such a provision here relating to justices of the peace and not relating to every other officer of the Commonwealth?

On the question of agreeing to the paragraph as amended, division was called for, which resulted thirty-six in the affirmative and thirty in the negative. So the paragraph as amended was agreed to.

The CHAIRMAN: The next paragraph will be read.

The CLERK read as follows:

"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 the 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."

Mr. J. N. PURVIANCE. Mr. Chairman: I move to strike out all from the word "any" down to and including the word "removal," [laughter,] which would embrace the whole paragraph.

The CHAIRMAN. The Chair would suggest to the gentleman from Butler that the best way to effect that would be to vote the section down.

Mr. J. N. PURVIANCE. The section provides that justices of the peace and aldermen may be removed by the judgment of any court of record within the city or county where he resides, upon complaint of any ten citizens upon due proof of misconduct or unfitness for office as shall be declared by law sufficient ground for removal.

I hope this section will not be adopted. If such a constitutional provision should be made, you would scarcely get a respectable and responsible man to accept the office. He might readily see that he might be on trial at every term of court, and especially if in the legal course of proceedings before him he might, though unintentionally, give offence to litigants before him. Ten men could readily be got to file a complaint. Under such circumstances you would not be able to get the best men to take the office of justice of the peace. The law, as it now exists, is good enough, and affords ample and proper remedy.

Mr. MACVEAGH. It is quite clear to my mind, that you will put this office of justice of the peace, if this section be adopted, in such a position that no decent man will possibly hold it. There may have been bad men elected in times past, and it may be that such men may be elected in times to come; but I beg you to believe that in many of the districts of this State the magistrate will be kept in continual hot water by this provision.

You have already declared that the probabilities are that a justice of the peace has been convicted of some infamous crime, or that he, at least, might have been or ought to have been; and that if he has not been removed by a court from an office of trust and profit, he very soon will be. Now you propose that any ten men may bring him before a court and have a hearing against him for his alleged misconduct or unfitness for office. There are other considerations to be regarded in securing a change in a constitutional provision beside getting rid of bad men. If you cannot trust the people with the election of these officers, that is only a reason for putting the appointment somewhere else, but it is no reason for compelling the persons who take this office to be men of dangerous character or no character.

Mr. BUCKALEW. Will the gentleman from Dauphin state what possible remedy can there be for the public against an officer of this sort? We must make some provision for the removal of a justice of the peace or an alderman for high offences. It is provided here that the remedy shall lie in removal upon conviction by a court. Is a justice of the peace when elected to hold his office by an indefeasible right of five years?

Mr. MACVEAGH. No, but you ought to have some general provision as to public officers which would apply to them all. I do not believe that in the country districts there are bad men filling the office of justice of the peace. There are no more worthy or better men in office than many of these very gentlemen. Now, can it be that you will provide that any ten men may drag into a court, on a charge of misconduct in office, the justices of the peace in every city and county of this broad Commonwealth?

This office of magistrate has been of high respectability in the rural districts of the State. I believe in a carefully drawn provision that will allow a hearing in any case of complaint, and if you will present a general provision of that kind, I will go as far as anybody to secure it. But what I do insist upon is that you do not make this office of justice of the peace specially disgraced so that it will not be held anywhere by a decent man. It seems to me that is the character of these special provisions; and I think that we are running into them to an extent that will be disgraceful in a legislative body. I think we are legislating specially entirely too

much. Let us have a general provision that will affect all the public officers alike, not specially the justices of the peace. That is what this ought to be.

Mr. BUCKALEW. My inquiry related to what remedy the gentleman proposed. I am not in favor of this provision as it stands.

Mr. MACVEAGH. I thought you were.

Mr. BUCKALEW. As it is drawn it would allow a mayor's court or other local court to take jurisdiction of these cases. I do not see any objection to confiding this power of removal in the regular court of common pleas of the county, but I would have the complaint preferred to the court by one-third of the electors of the district in which the justice resides, in order that he should not be subjected to the harassment of frivolous complaints.

Mr. MACVEAGH. I believe there is ample remedy in the common law of this State for the punishment of any justice who commits any offence for which he should be removed. You require legislation in order to make this at all efficient. You say that the Legislature shall decide what shall be sufficient ground of removal, and then the matter shall be heard in this summary way—not a mode of removal and punishment for corruption in his office; and you must remember that there are decent men who hold this office.

Mr. BUCKALEW. All that I insist upon is that justices of the peace shall not hold their office constitutionally, in defiance of law and in defiance of the people, for the whole period of five years. I do not care what form the remedy assumes, but I insist upon it that we shall have provision by which the common rights of the people in any district can be vindicated against a criminal or an infamous public officer; but if you leave this clause that justices of the peace shall be elected and commissioned for a period of five years, and say nothing else, no power in this State can remove him.

Mr. HAZZARD. I move to amend the paragraph so as to make it read: "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, in a manner to be provided by law." I would strike out all the rest.

Mr. BUCKALEW. Say "by the court of common pleas."

Mr. CORBETT. "Quarter sessions."

Mr. ARMSTRONG. The proper designation of the court is the court of common

pleas. Holding the quarter sessions is a mere function of the judge's office. The court is the court of common pleas.

Mr. HAZZARD. I am opposed to this ten-men provision. Unless a justice of the peace is a very negative man, there might be ten persons found in the community that would be disposed to harass him after every suit he tried. Since the Legislature in their wisdom have opened the door so widely for perjury and allowed the litigants to swear in their own cases before a magistrate, the result is to have about ten witnesses, and after both sets of witnesses sworn on the respective sides, and one half of them sworn lies, and the magistrate decides against one party or the other, as he must do, then he has ten men right at once to go to court with him, and they will be worrying him before the court all the time.

The amendment I move, is to strike out all after the word "resides," and insert, "in a manner to be provided by general law."

Mr. ARMSTRONG. I suggest that it be made to read thus:

"Any justice of the peace or alderman may be removed from office by the judgment of the court of quarter sessions having jurisdiction within the county or city where he resides upon complaint of any — citizens,"—let the number be fixed afterwards—"and due proof upon hearing of such misconduct or unfitness for office as shall be declared by general law sufficient ground for removal."

Mr. HAZZARD. I do not like that, because the Legislature may put in this ten-men provision.

Mr. BROOMALL. Will the gentleman from Washington allow me to make a suggestion?

The CHAIRMAN. The amendment will now be read by the Clerk.

The CLERK. The paragraph as amended will read as follows:

"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 the city where he resides, in a manner to be prescribed by general law."

Mr. HUNSICKER. If I understand the position now of this article, it is this: A judge of the Supreme Court is eligible to that office although he may have been convicted of an infamous crime; the same is true of a judge of the inferior court; and the only judicial officer in the State who is made absolutely pure by the Con-

stitution itself is a justice of the peace. And now you propose to try that justice of the peace in a manner to be prescribed by law before one of the judges who may have been convicted of an infamous crime! Is not that exactly the position in which this Convention has got itself by the attempt to legislate in our organic law?

I make this point with due respect; I mean nothing unkind by it; but is not that exactly the position in which the Convention now presents itself to the minds of the delegates on this floor? I trust that not only the amendment but that the whole paragraph itself will be voted down as entirely unnecessary and uncalled for by any exigencies of the times.

Mr. BROOMALL. I desire to know whether I have spoken on this amendment?

The CHAIRMAN. The delegate from Delaware has not.

Mr. BROOMALL. Then I will suggest to the gentleman from Washington that he modify his amendment so as to have it read in this way:

"Any justice of the peace or alderman may be removed from office by the judgment of any court of quarter sessions having jurisdiction within the county or city within which he resides, upon due proof, upon hearing, of such misconduct or unfitness for office as shall be declared by law sufficient ground for removal," leaving to the Legislature to decide what shall be sufficient ground for removal.

Mr. MACVEAGH. Would the gentleman allow an appeal to the Supreme Court?

Mr. BROOMALL. If the gentleman wishes to put in a provision to that effect, I have no particular objection. There is this, however, that strikes me as rather remarkable, that one of the majority of the Committee on the Judiciary, who were unanimous in this report, should call upon one of the minority and a dissenting member to defend it before the Convention.

Mr. MACVEAGH. I thought this was your section.

Mr. BROOMALL. No, sir; I dissented in committee.

Mr. MACVEAGH. Then we have both changed. [Laughter.]

Mr. BROOMALL. I see no reason why there should not be somewhere a provision to remove a justice of the peace. We can remove judges, we can impeach Governors, we can remove almost every other, probably every other officer but a jus-

tice of the peace, and I see no reason why there should not be some way for his removal; but I am willing to leave it to the Legislature to say what shall be sufficient ground for removal.

Mr. HUNSICKER. Allow me to ask a question?

Mr. BROOMALL. Certainly.

Mr. HUNSICKER. Would not the Legislature have that power without any provision?

Mr. BROOMALL. If we limit ourselves to putting into the Constitution nothing but that which is absolutely necessary nobody will be better pleased than I, but the Constitution will be very short indeed; and it is questionable too whether the Legislature would have the power without being so authorized. We have empowered the justices to hold office for five years, and unless some provision is made for their removal, it is very questionable whether they could be removed by the Legislature.

Mr. BOWMAN. If the gentleman —

Mr. BROOMALL. I yield for a question.

Mr. BOWMAN. If the gentleman will turn to the report on our files of the Committee on Impeachment and Removal from office, of which Mr. Biddle, I think, was chairman, he will find that it is a very excellent report, and contains this provision:

"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 an infamous crime."

That covers the whole ground.

Mr. BROOMALL. That, however, has not passed. We have not acted upon that section as I understand.

The CHAIRMAN. The Chair will inform the delegate that it has gone to a committee of the whole.

Mr. BROOMALL. Then, individually, I shall not insist any further on this paragraph against those who reported it.

Mr. MACVEAGH. My recollection distinctly is that this is the proposition of the gentleman from Delaware. I was opposed to it in committee. I sat quiet in order that he might bring it before the House. I have been opposed to it always; never voted for it in my life.

Mr. BROOMALL. The gentleman is laboring under two or three mistakes, which probably I could mention if it were not that it would be improper in open Con-

vention to state what took place in committee.

Mr. BOWMAN. One word. I think the discussion upon this paragraph under consideration may as well stop here as anywhere else, so it seems to me. Now let us vote this down, and when we get to the report—from which I have read—and I think there is not a gentleman here but what will go for the report of that committee, we can provide for the case.

Mr. ALRICKS. You were a member of that committee?

Mr. BOWMAN. No, sir. I was not a member of that committee by any means. But the section of its report which I have read obviates all the difficulties gentlemen have been speaking of when they tell us that there is no way provided to remove a justice of the peace from office. This section makes that provision by simply saying that if he shall misbehave himself in office or if he shall be guilty of an infamous crime, he may be removed, and the mode is pointed out, and clearly. It is a matter which properly belongs to the report of that committee; it does not belong here.

The CHAIRMAN. The question is on the amendment of the delegate from Washington (Mr. Hazzard.)

The amendment was rejected.

The CHAIRMAN. The question recurs on the paragraph.

The paragraph was rejected.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"In each city having a population exceeding two hundred thousand, there shall be established, in lieu of the office 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 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 may be from time to time prescribed by law."

Mr. ARMSTRONG. I desire to say a few words in explanation of this provision,

and first I will move to amend, after the word "causes," in the twenty-second line, by inserting "not exceeding \$300."

Upon the general question, I desire to bring the subject to the attention of the committee, and will do so very briefly. The complaints which reached the committee were chiefly from the city of Philadelphia, and the abuses which now characterize the administration of the inferior magistrates of this city seem to be wholly disgraceful. There are at present in the city of Philadelphia eighty-two aldermen, and there is an average of between fifty and sixty, probably about fifty-five, commitments every day. Of these it is represented to the committee that only about one in four or five is justifiable.

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

Mr. ARMSTRONG. Yes, sir.

Mr. HANNA. The information I have is that there are seventy-two aldermen.

Mr. ARMSTRONG. I had it on my notes "eighty-two." Possibly I am mistaken.

I cannot better express the condition of things existing in this city than by reading from the report of the inspectors of the Philadelphia county prison. I do so for the purpose of shortening my remarks and bringing the subject distinctly to the attention of the Convention. In the report of the inspectors of the Philadelphia county prison, made to the Legislature in February, 1872, and which, of course, embraces the statistics of the year 1871, it is stated:

"Of the prisoners committed for trial during the past year, nine thousand eight hundred and twenty-three, six thousand six hundred and ninety-seven were discharged by the committing magistrates, and in the cases of four hundred and fifteen the bills of indictment were ignored by the grand jury. These figures show a larger than usual proportion of persons discharged without being brought to trial, (nearly three-fourths of the whole number committed,) who, as a general rule, settled their cases, as it is termed, with the committing magistrates. It is obvious, that so long as the income of these officers depends directly upon the fees accruing from cases brought before them, commitments for trivial or unnecessary causes will be multiplied.

"The board again desires to express its opinion of the necessity of a reform in the police magistracy of Philadelphia, and in view of the proposed Convention to reform the State Constitution, it would in-

voke the aid of all good citizens to secure the necessary change in our organic law for this purpose. As has been often urged in these annual reports, we would here again submit that the great and foremost evil in the criminal department of Philadelphia is the system of police magistracy; and no reform is so much needed as a change at least in the mode of compensation of our committing magistrates. So long as their receipts are directly dependent upon and swollen by what must be stated to be simply a traffic in the manipulation of petty crime, it is idle to anticipate radical improvement in the treatment of this class of criminals. It is difficult to believe that such a system of magistracy can be tolerated in a city like Philadelphia, and that her citizens can sit quietly under so great a reproach. If our police magistrates were removed from the sphere of politics by a change in the mode of selection; if they held their offices by a good behavior tenure; were required to be learned in the law; and were compensated by adequate, fixed salaries, in place of fees, a reform would be accomplished, the effects of which upon social improvement can scarcely be estimated."

In the same connection I will read also an article published and circulated extensively by Henry C. Lea, who is not only recognized as a man of great ability, but who has given very special attention to this subject. Speaking of the aldermen of this city, he says:

"There is probably no more prolific source of wrong and crime amongst us than our system of administering justice in petty cases. It is true, that throughout the State the justices of the peace are usually upright men, selected by neighbors who know their abilities, and their discharge of their duties is doubtless, in the main, substantially satisfactory. In a large city like Philadelphia, however, the case is different. The candidate for alderman is usually an individual unknown to the majority of voters, but too well known to the violent and reckless men who manage primary elections and delegate conventions. The position has few attractions for honest men who can earn a reputable support, for the number of these officials is so great that the revenues of the office, if confined to legal fees and legitimate business, are inadequate. The voter, therefore, has little choice in the exercise of his suffrage; he votes in ignorance of the character of his candidate,

without much thought as to the importance of the matter, and with the general conviction that it makes little difference which of two unfit competitors is chosen. Everything, therefore, conspires to place in office venal, brutal, and unprincipled men, whose sole object is to extract the largest possible amount of gain from the position, and who have little scruple how that gain is to be obtained. To such men is confided power, almost despotic and irresponsible, over the poor, the friendless, and the helpless; and the sum of misery which they cause, if it could be shown in the aggregate, might well startle and put to shame the Christian community which permits it."

I do not propose to follow these very striking and forcible remarks with any words of my own. I cannot more forcibly bring the gravity and importance of this question to the attention of the committee. We think we have found a remedy. Perhaps it is not perfect; doubtless the suggestions of the Convention may perfect it; but we think we have struck upon a plan which, if it be carried out in the spirit in which it is intended, will alleviate the evils to a very remarkable extent.

During the last year, in 1872, there were forty thousand arrests in this city, of whom nineteen thousand were committed, and a very large proportion of them, about three-fourths, were discharged without a trial at all, and very many of them by collusion between the magistrates and the parties accused or their friends.

It would be tedious to detain the committee with a statement of the frightful oppression which is exercised in this regard. Persons are arrested upon the most trivial pretences, are brought before these magistrates, sometimes committed, very frequently time allowed them until they can see their friends, and they are allowed to settle, on payment of costs averaging about seven dollars a suit; and in very many instances these fees, thus illegally extracted, are divided between the alderman, the police officer, and other parties who are interested. This is done to an enormous extent.

Again, very many of these commitments are never returned. Thousands of them are not returned to the court at all, and whenever it is threatened that a particular case will be brought to the notice of the court of quarter sessions, a means is found for quietly discharging the prisoner by the magistrate himself. Thus persons are dragged from their families,



often imprisoned for a night or a day, sometimes for several days, when there is no sufficient probable cause to presume guilt, and in some instances without the necessary affidavit of probable guilt.

I do not, as I before remarked, desire to detain the committee by dwelling upon these frightful details. There are other gentlemen here who are familiar with them and who will state them. I have thus far trespassed upon the time of the committee only for the purpose of bringing to their attention the magnitude of the evil which we have undertaken to remedy.

Mr. J. N. PURVIANCE. For the purpose of bringing the whole matter directly before the committee, I move to strike out from the nineteenth line to the thirtieth line inclusive. That brings up the whole question as to whether this proposition shall be rejected or adopted.

Mr. ARMSTRONG. I rise to a parliamentary inquiry. I desire to know whether the amendment I proposed, to insert after the word "causes" the words "not exceeding three hundred dollars," was adopted?

The CHAIRMAN. It has not been. No vote has been taken upon it. What is the amendment of the delegate from Butler?

Mr. J. N. PURVIANCE. My motion is to strike out from the nineteenth line to the thirtieth line inclusive.

Mr. CORBETT. I rise to a point of order. Is that an amendment at all?

The CHAIRMAN. The delegate from Butler proposes to strike out the whole paragraph, and that cannot be done at this time.

Mr. J. N. PURVIANCE. In answer to the remarks of the chairman of the Judiciary Committee, I will say that I am opposed to the whole paragraph upon the ground that it introduces into the Constitution a new judicial office entirely, a police judge, unheard of in the jurisprudence of Pennsylvania before. Now, the Constitution in regard to the courts declares that the judicial power of this Commonwealth shall be vested in a Supreme Court, &c., and such other courts as the Legislature may from time to time establish. Under this Constitution, ample power is conferred upon the Legislature to establish this court in the city of Philadelphia, for it is the only place in the Commonwealth to which it applies, if such a court be necessary, and, therefore, I take it, it is not in place that we should put it in the Constitution of the Commonwealth. We

already have in the Constitution ample power for the establishment of this court, if it be necessary, and I therefore see no necessity whatever for the adoption of this paragraph of the section.

If the evils exist which are complained of by the gentleman from Lycoming, and if the aldermen and other officers of the city of Philadelphia are so corrupt and inefficient and unfit to discharge their duty, then it is at once the province of the people of this city to appeal to the law-making power under the present Constitution for a remedy, and that that remedy would be accorded to them no one can doubt, if the grievances are so great as are represented. But, as has been remarked by the gentleman from Dauphin, if we are to make a Constitution that is to meet all the wants of the different localities of the Commonwealth, and not apply to the whole State in the adoption of general principles in our organic law, we might sit here for years before we could accommodate all the wishes of the people throughout the State. Our province is to declare general principles, and when we have done that, we must leave the details to the Legislature. The general power under the Constitution as it now exists is ample for this very purpose, and provides ample remedy in the case suggested by the gentleman from Allegheny and in the paragraph now under consideration:

"The judicial power of this Commonwealth shall be vested in the Supreme Court, in courts of oyer and terminer and general jail delivery, in a court of common pleas, orphans' court, register's court, and a court of quarter sessions of the peace in each county; in justices of the peace, and in such other courts as the Legislature may from time to time establish."

Here is the power given in the present Constitution to the Legislature to establish this police court in the city of Philadelphia if it becomes necessary. I am opposed, Mr. Chairman, to the introduction into our Constitution of things that are already provided for by the present Constitution. Wherever there is a want, and the present power is not sufficient to supply that want or to afford a remedy, then let us have a constitutional provision; but wherever the power exists under the present Constitution, then I take it we are encumbering and loading down the instrument we are framing too heavily, by providing for it here, and it is too much loaded already.

With these views, I hope the whole paragraph will be voted down.

Mr. HAY. Mr. Chairman: I am entirely in harmony with the views of the Judiciary Committee as expressed in this section in so far as their desire is to lessen the number of aldermen in the cities, and to increase the efficiency of persons holding that office, and in so far as they think these officers should be compensated by a fixed salary paid out of the city treasury; but I cannot bring myself to favor the section as reported, and which is now before the committee, because of its proposal to abolish the old office of alderman and substitute in place of it a new and unfamiliar office having a new designation. I see no reason why, because bad men have been elected aldermen in our cities, we should abolish the office itself. Our object should rather be to improve the office, rectify any abuses which may exist in its administration, and devise measures, if possible, which will secure the selection of better men to fill it. But I am not in favor of abolishing an office useful to the people, to which they have been accustomed for many generations. The designation of alderman is an old and honorable one, which has been borne, and is yet borne, by many upright, honorable and good citizens.

I cannot favor the section for another reason. It proposes that these offices of police justices or aldermen, or by whatever name they may be finally called, shall be filled *only* by persons learned in the law. In my opinion, this provision would only tend to secure the placing in office of some of the very worst men in the community. There is not a more dangerous and less worthy class of men than the lowest grade of those who have been admitted to the practice of the law; and this section would practically so operate as to give to these men, who are unable to sustain or advance themselves in their profession, offices by which they would simply be enabled further to degrade themselves and the community in which they lived. There are in every large city many worthy, upright, good citizens, familiar with the principles of justice, thoroughly competent to discharge the duties of an alderman, and better fitted in many ways for the position than are the most inefficient and dependent hangers-on of the legal profession, who would be the only ones who would be found willing to take the offices to be created by this new section.

In my opinion, also, the number of courts proposed is too few. I think there ought to be more than one alderman or police justice for every thirty thousand inhabitants. If this proposition applied to the city of Pittsburg, it would give to that city, as it is now constituted, but four of these officers. I do not think that would be enough for the proper administration of justice. The very object of aldermen in large cities is ignored by the section. These offices exist in order to afford a rapid and economical means for the trial of small causes at issue between the people. There ought to be an office near to the people, filled by citizens knowing their neighbors and known by them, where justice could be rapidly and economically administered with the least trouble and publicity. The provision proposed would remove these officers too far from those whose disputes they should mediate, and to whom they should be made to feel closely responsible.

Another objection that I have to the section is its want of uniformity. We should not adopt a section which introduces a system in one city which cannot be applied to all cities in the Commonwealth. One of our chief troubles heretofore has been special legislation for particular cities, and special systems made for the different communities. This ought not to be perpetuated in this Constitution. What is good for one is good for all. If the section could be so changed as to apply to all cities, increasing the number of officers proposed, yet reducing it below what it is at present, and retaining the old and honorable designation of alderman, I would then be in favor of it. The section should be so amended that it would apply to all cities, greater or less; so that in small cities there would be one of these officers, and in larger cities more, in accordance with their population and business requirements. I therefore propose the following as a substitute for the section:

"There shall be one alderman in each city, and one additional for every fifteen thousand inhabitants therein. When the population of any city entitles it to have more than one alderman, districts, of as nearly equal population as may be, shall be established by law, in each of which districts but one alderman shall reside and hold office. Aldermen shall have and exercise jurisdiction and powers as heretofore, except as the same may hereafter be modified, altered or enlarged by

law, and shall receive a fixed compensation, which shall not be diminished during their term of office, and which shall be determined and paid by the city in which said aldermen hold office. Their term of office shall be seven years."

Mr. BUCKALEW. Mr. Chairman: This is very much a city question, and I do not intend to take much part in its discussion. But I desire to say, in response to what was said by the gentleman from Butler, (Mr. J. N. Purviance,) that if any member is indulging the expectation that the Legislature will extend relief and a remedy in this case, he is greatly mistaken. These aldermen, distributed throughout every ward in the cities, are a most potent local influence in the selection of members of the Legislature, and they, ordinarily, will absolutely control the delegations of the cities in the Legislature. I have seen enough at Harrisburg to be fully convinced that a general desire held by the magistrates of a great city, with reference to any question in which they are interested, will control the delegation from the city, and it is idle to expect that the representatives of Philadelphia or of any other city will ever vote to abolish this office of alderman, or to correct its abuses, or to introduce any reform in regard to it. That we may assume in the outset in considering this division of the section.

Now, this article upon which we are engaged is one which covers the whole field of judicial organization in this State, commencing with the Supreme Court and ending with the local magistrates. We are passing over the whole field. We have just made provision for the election of justices of the peace throughout the State, in the interior, and it only remains for us to determine, and we must determine here, what we will do for the city. We are, therefore, as the case now stands, to choose between the two systems proposed to us; either to continue the aldermanic system which we have now, or adopt the plan proposed by the committee, or some modification of it.

As to the amendment of the gentleman from Allegheny, (Mr. Hay,) there is one strong objection to it; that is, that he has his aldermen, as he calls them, the new officers, elected in single districts; that is, in minute sub-divisions of the cities. That is simply continuing the present system under another name. The evil now is that these elections are too local, too much confined territorially with reference to

each officer chosen, so that a disturbing influence in any one locality of the city controls the choice of the officer there. One of the main objects of the amendment reported by the committee, as I understand it, is that these officers shall be chosen by a vote at large, so that the aggregate intelligence, integrity, and public spirit of the city shall bear upon this question. Undoubtedly, by electing at large we shall obtain better officials.

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

Mr. BUCKALEW. Certainly.

Mr. HAY. I desire to ask the gentleman from Columbia whether, according to his reasoning, justices of the peace ought not to be chosen by the whole vote of a county?

Mr. BUCKALEW. No, sir; because in the scattered populations of the interior, in the agricultural regions, we are not obliged to struggle against those sinister influences that have existence in cities.

Mr. J. N. PURVIANCE. I would ask the gentleman how many judges under this section there would in the city of Philadelphia? Would there not be twenty-four?

Mr. BUCKALEW. I think about twenty-two.

Mr. J. N. PURVIANCE. Twenty-four judges.

Mr. BUCKALEW. Twenty-two or twenty-three; I have not gone into the calculation precisely. I can only speak to the points that lie on the surface, leaving the discussion of details to the gentlemen from the city who are more directly interested. I desired, though, to speak to the two points with which members outside of the city are as well prepared to deal as those residing within it, first, the necessity of constitutional amendment in order to get rid of the aldermen who now subsist upon fees, and next, the imperfection of the amendment now pending, because it does not permit the election of these local magistrates by a vote at large or by large divisions of the city. If this number of twenty-two or twenty-four is inadequate for the wants of Philadelphia, the representatives of the city will say so, and we can make provision for an adequate number, whatever it may be. That is a question of detail on which I am not informed.

Mr. MACCONNELL. I should like to ask the gentleman a question with his permission. I ask him what would be effected by the amendment proposed by the

gentleman from Lycoming, the chairman of the committee, if these judges have jurisdiction in cases to the extent of three hundred dollars to be tried without a jury, and the decision of the judge is to be final?

Mr. BUCKALEW. No, sir; there is a provision in the Constitution that the right of trial by jury must obtain. There is no difficulty about that. I think that twenty-two or twenty-four local courts, managed by competent men, would be adequate to transact all the business of the city, and that by means of them, if you extend the jurisdiction to three hundred dollars, you will largely relieve the ordinary courts of law, the court of common pleas and the court of quarter sessions. These officers should be put under salary and not interested in fees. Thus a great many cases that are now sent to the upper courts would be stopped in the lower, and they should be.

Mr. CORBETT. I would ask what the question is?

The CHAIRMAN. An amendment was offered by the delegate from Lycoming (Mr. Armstrong) to insert the words "not exceeding three hundred dollars" after the word "causes."

Mr. CORBETT. The delegate from Allegheny (Mr. Hay) moved another amendment. Is that proper at this time?

The CHAIRMAN. The delegate from Allegheny (Mr. Hay) moved to strike out and insert. That is the pending amendment.

Mr. CORBETT. Is that competent at this time?

The CHAIRMAN. It is.

Mr. CORBETT. It is not an amendment to the amendment.

The CHAIRMAN. The Chair decides that it is competent to strike out and insert—

Mr. ARMSTRONG. The Chair will permit me to make a remark before the decision is rendered.

The CHAIRMAN. The decision has been rendered. The Chair knows what he is deciding.

Mr. ARMSTRONG. I do not propose to discuss it. I only propose to read a little from the manual.

The CHAIRMAN. The Chair may be in error.

Mr. D. W. PATTERSON. I should like to ask the delegate from Allegheny whether his amendment does not apply to all cities?

Mr. HAY. Yes, sir.

Mr. D. W. PATTERSON. Then I hope it will not prevail. We do not want it in our city. I do not know of any cities that want it but Philadelphia and perhaps Pittsburg; but my friend from Pittsburg near me (Mr. MacConnell) says they do not want it. Why apply it to all cities?

Mr. HAY. I offered the amendment because I believed we should not change our aldermanic system in the city of Philadelphia without extending it alike to all cities of the Commonwealth.

Mr. J. N. PURVIANCE. I would ask the delegate from Lancaster if they had not a court of this kind in Lancaster city at one time, called the recorder's court.

Mr. D. W. PATTERSON. No, sir; but we had a mayor's court for criminal cases altogether, such as are tried in the quarter sessions.

Mr. J. N. PURVIANCE. Was not that court abolished by the almost unanimous desire of the citizens of Lancaster?

Mr. D. W. PATTERSON. Yes, sir. It was a purely criminal court.

Mr. J. N. PURVIANCE. Does not the gentleman know that they had a similar court, a police court, in the city of Pittsburg, and that it was also abolished?

Mr. MACCONNELL. I think so.

Mr. D. W. PATTERSON. I was going to say that I hoped this would not be forced on our city. We do not want anything of the kind. The present system appears to be very satisfactory there, and this plan would be expensive to us and, as we think, for nothing; but if the city of Philadelphia or any other city wishes it, we can mention it by name. For my part I am willing to vote for it if it is an absolute necessity; but I do not wish to extend it to all the cities when there is no petition or request from any gentleman on this floor and apparently no necessity for it. I hope, therefore, that the amendment of the gentleman from Allegheny will not prevail. I am willing to vote for the section as it stands if the city of Philadelphia requires it; and if no other city asks for it, let us name Philadelphia in this section specifically, and then the provision will apply to that city alone.

Mr. CAMPBELL. I hope this amendment will not prevail. I do not think it will suit the people of Philadelphia at all; and as the people of Pittsburg do not seem to want it, I do not see why we should vote for it. The amendment seems to me a little impracticable. It says that a ward shall not be divided in the formation of an aldermanic district, but it also

says that there shall be one alderman or justice of the peace for every fifteen thousand people. The ward in which I reside in the city of Philadelphia, for instance, has a population of over forty-five thousand, and if the amendment were adopted we would have that ward, composing a district, with only one justice. There is no equality of districts about it, and it would therefore not work in practice. Then, in addition to that, there is the objection stated by the gentleman from Columbia, that it provides for the election of justices in single districts.

For these reasons it should not be adopted. If it is voted down, and I have an opportunity, I intend to offer a provision applicable to the city of Philadelphia alone.

MR. CUYLER. Mr. Chairman: I desire to say a very few words because the section as it stands was written by me, and I therefore feel it incumbent upon me to raise my voice in support of it. I wrote it and submitted it to the Judiciary Committee.

I do not propose to say anything in reply to that which fell from the gentleman from Butler, because I am at a loss to understand why the gentleman from Butler should have deemed a Constitutional Convention necessary, or should have thought that he should have accepted membership in it in view of the principles he holds. His objection to this section is that it proposes to introduce an amendment to the Constitution. Why, sir, that is what we came here for. For that we were called into existence. If the people of Pennsylvania did not suppose the Constitution needed amending, why did they call this Convention. That I understand to be the point of his objection, and I think it is answered by simply stating it.

Now, as to the particular purpose of the section, there are no words that I can employ or that the English language would furnish me that can overstate the evil which it is designed to remedy. Gentlemen heard read in their hearing a few moments ago, by the chairman of the Committee on the Judiciary, the eloquent and impressive words of the inspectors of our county prison, and the added words of Mr. Lea, a gentleman who has devoted much attention to the improvement and advance of our social system in the city of Philadelphia. It is there stated that the city of Philadelphia was handed over—and I use advisedly the very words he employed—to venal, brutal and dishonest

men. Those are the very words that were employed in his communication, and they are literally true—to venal, brutal and dishonest men so far as the administration of the petty magistrate's business of this city was concerned. I do not mean to say that there are not exceptions to this remark. I do not mean to say that you cannot find among the petty magistracy of the city of Philadelphia individual instances of pure and upright and honest men. Such men exist, but they are comparatively few. The rule is the class of men who have been described in the paper that was read by the chairman of the committee; the exceptions are the rare cases which I mention.

That being the fact in this city of Philadelphia, we are warned by the gentleman from Columbia who has had a large experience in the Legislature of this State, and whose weight of judgment and weight of character we all of us know and appreciate, that there is no remedy to be had and none to be expected from the Legislature. What are we to do? Where is it to come from? If it is not to be found here in this Constitutional Convention, where is the remedy to be found for this condition of things? That we ought to have a remedy, that we must have a remedy, that seven hundred thousand people who live here in this city of Philadelphia demand a remedy, nobody can deny. It cannot be had from the Legislature. Where else is it to be had if the Constitutional Convention sitting here and in its wisdom considering this subject cannot find it? What is the remedy? The gentleman from Allegheny (Mr. Hay) proposes an amendment which, if I understand it, does little except to retain the old name of alderman and justice of the peace and to elect these men in wards or small districts and not upon a general ticket.

As to the change of name, if I had no other reason for the change of name I would say that the name of alderman and justice of the peace has become so odious in the city of Philadelphia that you cannot get decent men to accept the position. They will not take it. It has been dishonored; it has been dragged in the mire; and you cannot to-day get the competent number of reputable men in the city of Philadelphia to accept that office. If we are to elevate it, if we are to dignify it, we must provide another name for it. It is indispensably necessary to do so. If there were but the objection of a mere

change of name, I should appeal to the gentleman from Allegheny, in view of the condition of things which exists in our city, to consent that the name of the office should be changed; but I really see nothing in the amendment that he proposes differing from the section except simply that, and that in which I think he was admirably answered by the gentleman from Columbia, he proposes to elect by local districts instead of electing by a ticket at large.

Mr. HAY. Will the gentleman indulge me? The section under consideration proposes also that the judges of these courts shall be learned in the law. I would not require that.

Mr. CUYLER. I understand the gentleman did state originally, as an objection, that this section provides that these judges should be learned in the law. Well, has it come to be an objection that a man who is to sit in judgment upon rights of property and rights of personal liberty, should be learned in the law? Has that come to be an objection and a reason why a man should be incompetent for the office?

Mr. HAY. Does not that term apply merely to members of the bar? Is it not simply a technical designation? It does not necessarily imply that a man so described is learned and competent.

Mr. CUYLER. Perhaps so; but a man may be learned in the law, perhaps, without being a member of the bar.

Mr. HAY. So I think.

Mr. CUYLER. But being a member of the bar he may not be learned in the law, though he ought to be so. It is too often the case that he is not so. It cannot be an objection that the man who is to sit in judgment upon the rights of his fellow-man, has had a training and education that qualify him for the duty he is to discharge. That cannot damage him. That cannot hurt him. It ought to be a step in the right direction; it ought to help him and assist him to qualify him for the duties he is to discharge.

But it is to be remembered that we are proposing to make these men gentlemen of learning, gentlemen of character, gentlemen of thorough fitness for the duty that they are to discharge, so that they may be in the true sense of the word a magistracy in our large cities, so that they may be looked up to, so that in the petty conflicts with regard to amounts that may seem to us very humble but which to the litigants that go into their courts are often

very important indeed, their decisions may often, perhaps generally, be final; men whose intelligence and whose character may be such that our humble citizens would accept their decisions as to the controversies that arise between them, and instead of being involved in the sacrifice of time and in the expenses that attend a further prosecution of litigation, would be relieved from that, accepting the decision of this magistrate as the end of the controversy? It is not so now. Almost every cause that comes before a magistrate where the issue is a civil one, is the subject of appeal. Its sole effect is to put costs into the pocket of the magistrate which are to come from the pocket of one or the other of the litigants, who in these courts are seldom able to bear the expense at all, and always to entail upon them the expense and the delay and the inconvenience of an appeal to a higher tribunal, for that is the inevitable consequence. We want to bring about a condition of things in this city in which gentlemen of standing and character and education will be willing to accept this office, and will to the great benefit of their fellow-citizens discharge the duties which it entails upon them.

Now as to the detail of the section itself, it may admit of much improvement. I am not at all tenacious as to its precise verbiage. I am not at all sure that much might not be done that might render it more efficient for good than as it stands written upon the report of the committee here. All I claim for it is that its object is right, that its purpose is correct, that it is a substitution of something for the old system which is an improvement, although I doubt not there are gentlemen here who can make suggestions that would add very much to it.

But I am sure that I speak the sentiment of the bar of the city of Philadelphia, with almost absolute unanimity; that I speak the sentiment of the bench of this city, and that I speak the sentiment of all right-minded men in this city, when I say that those impressive words which were read in your hearing by the chairman of the Committee on the Judiciary a few moments ago, state nothing but the very truth with regard to the condition of affairs now existing. Therefore it is that I appeal to my brethren in this Convention not to throw us back under the old system which we have tried and found a failure, and not to leave us oppressed with the load which rests upon us now, but at

least to give us the opportunity to try this experiment, unless they can propose something that is better.

Mr. EWING. Mr. Chairman: The question before us is one of very great importance, and should receive the most careful consideration of every member of this Convention. My opinions are very decidedly against the project that is proposed here by the Committee on the Judiciary. One of my chief reasons for being opposed to it is, that it is precisely what the gentleman who has just taken his seat (Mr. Cuyler) has called it, "*an experiment.*" It is but an experiment, and I think a very dangerous one that the Committee on the Judiciary here ask us to adopt as the unalterable law of the land. If this paragraph is to be adopted in any manner whatever, I hope that the Convention will at least say that it will only be "*may*" instead of "*shall*," and that it will not apply to any district in the State except Philadelphia.

Now it is not necessary for our Philadelphia friends to tell us of the evils connected with the aldermanic system, or of the evils that have grown up under the jurisdiction of petty magistrates in the cities and towns, because some of us are as well acquainted with that subject as the delegates from this city. I do not suppose that Philadelphia is any worse than many other cities in the country. I do not believe that Philadelphia, either in its elections or in its people, or in its magistrates, is as bad as it is represented to be. If so, it is the fault of these good people, ninety-eight of whom out of every one hundred are good citizens—I believe that is the proportion that has been given us. If these good citizens would go to the elections and take care of them themselves, these evils would speedily be corrected. And that is the only way in which an efficient corrective can be applied. No help from a legislative enactment or a constitutional provision will aid the people of this city in removing the evils of which they complain. Whenever the mass of the people in any community become so that it is not fashionable for them to attend to politics, when they are not willing to take upon themselves those duties which are necessary to protect their freedom as a community, then the only help for them is to be governed either by an absolute monarch or by some power outside that is strong enough to control every element within their territory.

Mr. CUYLER. Will the gentleman from Allegheny pardon a remark?

Mr. EWING. Certainly.

Mr. CUYLER. It does not make the slightest difference in the city of Philadelphia who goes to the polls, or how he votes; the recording of the result does not, in the least, depend upon the manner in which the votes are deposited.

Mr. EWING. Then I say that that is the fault of the good people of this city. Will any gentleman tell me what the good citizens of any place, if they have the majority, will suffer their elections to be controlled in this way? Gentlemen need not tell me that the anglo-saxon race in this day, if they do their duty, will allow three men to control ninety-seven. It is unfair to charge such a thing against a majority. It is a charge of cowardice against the majority which I cannot believe is deserved.

Mr. CAMPBELL. Will the gentlemen from Allegheny allow me to ask him a question?

Mr. EWING. Yes, sir. Only I intended to make but a short speech.

Mr. CAMPBELL. Does not the gentleman know that the people of Philadelphia are not responsible for their want of power, under their present election laws which were carefully framed by the Legislature so as to make the ninety-seven honest men subject to the three corrupt men?

Mr. EWING. I do not believe it.

Mr. CAMPBELL. Does not the gentleman know that the Legislature passed a law taking away from the people of the city of Philadelphia the very rights that he claims they should exercise?

Mr. EWING. I do not know it. You can have no law which can prevent you from having your rights if you attend to them yourselves. I do not mean by this remark to give offence to any of my Philadelphia friends. I am ready to admit—I know it to be a fact—that there are great wrongs perpetrated by these magistrates. I know there are great evils connected with the aldermanic system, and in fact they cannot be remedied by legislative provision, or anything else. The difficulty lies in the defects in human nature. I, however, imagine that there are some things which can be corrected.

First, there are too many magistrates. There are two to a ward, or perhaps three, and the office is of so little importance to the great mass of the citizens that they do not pay any attention to it. That is the

ordinary result in the towns and cities, and consequently very indifferent men get these offices. I think that could be cured by diminishing the number of officers to be elected to these positions. The office then would become a matter of more importance, a matter of more dignity, and it would be an office that would compensate its holder by legitimate fees, or by a legitimate salary, and would remove the inducements, which the petty magistrates now have, to encourage dishonest practices.

Again, I believe it would be a decided advantage to have these offices salaried, although there are some objections to that. It would take away the temptation which now exists to increase their fees. When you do that, I think you will do a great deal to elevate the office and to prevent a repetition of the difficulties that now occur. Another source of the oppression, and injustice, and wrong done to the poor people of the cities, boroughs and districts, arises from this fact: The Legislature has invested the aldermen and mayors with almost despotic power. In many petty cases the Legislature and city councils have undertaken to create offences heretofore unknown to the law and undefined. These magistrates have jurisdiction over these offences. They convict summarily and there is no appeal from their decisions. It is true a *certiorari* can be taken, for that is a constitutional right, otherwise it would have been taken away from the people. Now I hope to see a provision by which an appeal from a summary conviction to some court of record shall be the right of every defendant. That I think will cure a large amount of the evil.

But to return to the provision that has been reported by the Committee on the Judiciary. I have several objections to it: First, as it now stands, it would apply to the city of Pittsburg—at least after we have the consolidation that will shortly occur—and I do not want that. Next, the provision is made absolute. That I think is a very great error, because this is *but an experiment*, and I believe if the provision be adopted that in less than five years the people of Philadelphia will be just as anxious to change this proposed arrangement as they now are to change their present aldermanic system. Again, this provision proposes to give these offices exclusively to men learned in the law. It says that five years of practice in one of the courts of common pleas shall

be a necessary qualification. I do not believe that you can get any man of this character, with these qualifications—because this means a lawyer who has practiced for five years in the court of common pleas—you cannot get any man fit to be trusted with this sort of business who will take the office after he has five years of practice in court. It is an unpleasant office. Its duties are exceedingly unpleasant. It is not likely to be to a lawyer a very reputable office, and the result would be in this State, as it is the world over, that the police magistrate, where a lawyer, will be a mere shyster. That is the inevitable result. It has occurred in New York, it has occurred in New Orleans, it has occurred in all great cities. It is the traditional reputation of a police magistrate that he is a vulgar, low, dishonest barbarian; [laughter;] and in a position of that kind, a lawyer will be worse than any other man. [Renewed laughter.] He knows a little more and will be able to be worse.

These are my objections to this provision. I would rather trust honest ignorance with common sense than a smattering of law; and no lawyer of five years' experience who will take such a position as this, will in that experience have acquired anything more than a mere smattering of law. Again, another objection which I have to this provision is that I think the term too long.

MR. HANNA. Will not a salary compensate a lawyer for accepting such an office?

MR. EWING. No, sir! Salary will not compensate a good lawyer for going into such a position, and for several reasons. Here is one of them. As was stated by the gentleman from Philadelphia, (Mr. Cuyler,) who gave us such an eloquent address on the evils of this system as applied to this city, the police judge comes in contact with the lower grades of society, with the poor and weak, and debased; with people who have no means of protecting themselves; with people who are bound to submit to the decisions of these magistrates, regardless of whether they be right or wrong.

The CHAIRMAN. The Chair is obliged to remind the delegate from Allegheny that his ten minutes have expired.

MR. J. M. BAILEY. I move that the time of the delegate from Allegheny be extended.

The CHAIRMAN. The delegate from Huntingdon moves that the time of the



delegate from Allegheny be extended. Are there five objections?

Mr. CARTER. Here is one.

Mr. WORRELL. And here is another.

The CHAIRMAN. There are not five delegates who object. The delegate from Allegheny will proceed.

Mr. EWING. Mr. Chairman: I say that these magistrates not only have despotic power, but necessarily so. It is in the very nature of their office, and of the duties of the office. It is inevitable from the character of the people with whom they come in contact. I believe that the observation of every man who has had occasion to look into the subject, the conclusions of every man who has had occasion to read or reflect upon the subject, will show that wherever and whenever you place any man, no matter what his character may be, in the exercise of despotic and uncontrolled power over poor, ignorant, debased people, the tendency is to debase and barbarize that man. It is so from the overseer of a negro plantation up to any position in which a man can be placed.

Mr. HAY. I desire to say to my colleague, if he will excuse the remark, that if he proposes to amend the pending paragraph by striking out the word "shall" and inserting the word "may," I will withdraw my amendment for the purpose of enabling him to do so.

Mr. EWING. I want that done.

Mr. HAY. Then I will withdraw my amendment for the purpose of allowing my colleague to offer his.

Mr. EWING. I will not offer that amendment now. I do not propose to offer any amendment myself. I would prefer the plan offered by my colleague, but I would prefer that he should have the word "may" there, and I would also prefer that he should apply the provision to cities of over seventy-five thousand or one hundred thousand inhabitants. I want the provision so framed—and this I understand to be the purpose of our people and of our entire delegation—that if the Legislature may provide, as I believe they have done by recent statute, that the city of Pittsburgh shall be divided into aldermanic districts, we may, if we find it to work badly, have it changed to a plan that may result to our greater advantage. I desire such a provision, that if the people of the city of Philadelphia, after a thorough trial of this experiment, shall find it to work disadvantageously, they may have the power to change it hereafter. I

would even be willing to vote for this provision with an amendment that would limit it to Philadelphia alone; but I hope that the gentlemen from this city will not bind themselves by such an iron rule as this would be.

Mr. SIMPSON. I suppose, Mr. Chairman, that no question which can come before this Convention will interest as large a number of people as the question now under consideration, the selection of persons to administer the local judicial affairs of our cities. I would be very willing to agree with my colleague (Mr. Cuyler) who addressed the Convention a few moments ago, but unfortunately I cannot do so in all respects. While I agree with some of the remarks made by him as to the character of some of the magistrates of our city, I think he a little over-states the fact when he says that the exceptions are the honest men. I know, and we have sacred writ for it, that it takes a very little leaven to leaven a large amount of bread. I know it takes a very little quantity of dirty water to spoil a large mass of pure snow. Yet I cannot conceal from myself the fact that we have had men in the local magistracy of this city that were an honor to this community and would have been a credit to any city. I recollect John Thompson, against whom no man will bring a word of reproach, who was a magistrate in this city for many years. I recollect Peter Christian, another of those honored and worthy magistrates; and we have to-day, as an alderman of this city, Peter Hay, who has been a magistrate for many years, and who is an honest, upright man. These are all men to whom no one in this community could assign any other record than that of blameless lives and faithful public service.

I do not know what course may be pursued in this Convention with reference to this proposition, now the immediate subject of consideration, but I hope that whatever plan may be adopted one thing may be omitted from this section, and that is to require the magistrates to be learned in the law. I trust that such a provision will not be inserted. If it is, the impression will go abroad in the community that this Convention, composed of a majority of lawyers, are providing places for their brethren of the profession. I hope that the office of magistrate will be left open to the honest men of all classes, whether lawyers or not, and that the provision that shall be adopted will be of such a character as to secure good

men as magistrates by requiring a large number of persons to participate in their selection. If a plan is provided which will require their election from the whole city of Philadelphia, or from large districts, it will prevent a bad man from being chosen. This local influence will not be strong enough to secure his selection in a large district, and if the subject is left open to the people they can select good lawyers if they choose, or they can prefer honest laymen such as the magistrates I have already named. I have been spoken to by a number of persons in relation to this very section, and I have received more communications from citizens of Philadelphia in relation to this subject than any other that has been before us. Our city has become a union of urban and rural population. In some of the built up parts of the city vice abounds, and in others virtue; and we have beside that the pure country atmosphere, for parts of the city are entirely rural. I am reminded that in one section of Philadelphia, in the upper part of the Twenty-third ward, we have one election precinct, formerly two townships, which has four magistrates. They would be willing to be let alone. They would like to come under a general provision which can apply to the rural parts of the State outside of the city of Philadelphia, and not be subject to the burden of being in a municipality like ours. But to whatever rule is established, they will have to submit along with the citizens of any other part of the State; and I hope this Convention will so treat this subject, carefully and considerately, that it will secure to the city of Philadelphia a local magistracy that will be an honor and an advantage to it, not confining it to the members of the legal profession, and establishing such large districts as will ensure the selection of good men.

Mr. J. N. PURVIANCE. Mr. Chairman, I do not intend to reply to the distinguished gentleman from Philadelphia, (Mr. Cuyler,) for he has offered no reason whatever for this change in the judicial system in the city of Philadelphia. My desire is to say, that if the character of the aldermen and justices of the peace of the city is such as he represents, corrupt, venal, brutal and dishonest, he should feel it to be his duty to remove from a city where such corruption exists. His fine social qualities, high legal and literary attainments, and fair moral stand-

ing should admonish him that this city is no congenial home for him.

My objection to the section is that it legislates all the aldermen of the city out of office, and establishes twenty-two police courts, with twenty-two law judges. It is a change not asked for by the citizens of the city, by petition or otherwise, and introduces a system tried and condemned by the cities of Pittsburg and Lancaster. And further, it destroys uniformity in the Constitution by introducing special provision for one city of the Commonwealth.

Mr. CARTER. Mr. Chairman: I have not heard since being a member of this body anything that I thought was entitled to as much, certainly not to more, consideration than those extracts which were read by the chairman of the Committee on the Judiciary. They come from gentlemen of the highest intelligence, who are perfectly acquainted with the subject, as I believe, and have a right to believe, of which they treat. Believing this, I am not prepared to pass lightly over the request that they make or which is at least made indirectly by them.

But a delegate that I presume has represented their views, the distinguished gentleman from Philadelphia (Mr. Cuyler) in endeavoring to guard against the evils which they deprecate and desire to have removed from them, has addressed the committee, and I think we should treat his views, knowing as he does whereof he affirmed, and their views, with very great consideration. If the report is not applicable to the city of Pittsburg, or if the people of Pittsburg do not desire it, do not impose it upon them; but if the people of Philadelphia do require it or some similar measure, as I think the statements we have heard show, why not give it to them?

The gentleman from Allegheny designated this as an experiment. It may be to some extent an experiment; but we know what the system is at present and there is no danger, I apprehend, of making the matter worse, and there is a large probability of making it better. I cannot oppose it with my present feeling in view of what I know and what I have heard on the subject.

Perhaps the remarks of the gentleman were not heard by all the Convention, and I will indicate them to those who did not hear him. It seems to me they struck the key-note, as it were, of this matter. I mean the gentleman from

Philadelphia, in the south-west corner of the Hall, (Mr. Simpson.) He said that in this city which is so diverse in the character of its population, and in the different wards, a necessary accompaniment of all great cities, there are numbers of wards whose population is such that good men cannot be elected in them, while in other wards they may be; but if this system is introduced, of electing by general ticket for the whole city, it seems to me it will secure honest and good men, because the mass of the people are interested in having pure courts and good judges, and I think it may be trusted for that reason among others.

In regard to the general view against special legislation for one city or one part of the State, although I have been opposed to going in that direction, there are cases in which it may seem to be unnecessary. We must not forget the fact that this great city embraces one-fifth of the population of the whole State, and there is a condition of things appertaining to these great cities which does not apply in all parts of the State. We must recognize that difference and endeavor to meet the wants of the great cities as they occur, as they manifestly do in this case. I think there can be no doubt whatever but what this section has been well considered, and that the people of the city do require such a change, and I repeat I cannot but let the statements of those gentlemen have very great weight with me, and I will, when amended in some particulars, support such an amendment as they require, and have clearly shown to be needed.

Mr. J. R. READ. Mr. Chairman: I trust that the amendment before the committee, the amendment of the gentleman from Allegheny, (Mr. Hay,) will be voted down. It in no wise renders the assistance that is absolutely needed by the people of Philadelphia in this matter. I am not altogether satisfied with the section as it came from the committee; but I do believe that in its main features it will to a great extent alleviate the sufferings which the people of Philadelphia have labored under.

I am not in favor of increasing the jurisdiction to \$300. I do not want to see a large number of courts scattered all over the city of Philadelphia, by the process of which people can be taken from the extreme north-western part of the city down to the extreme south-eastern, nor from the north-eastern to the north-western. I do not think it is at all necessary to increase

the jurisdiction to \$300. We have been satisfied in the past with having it at \$100; and so far as the civil jurisdiction of the justices of the peace or aldermen is concerned there has not been any very great suffering or wrong done. To be sure the people who have been taken before them as defendants are not, as a general rule, satisfied with their decisions, because it is quite true that they are nearly always in behalf of the plaintiffs. What I mean to say is that there is very little wrong inflicted in that respect compared to the gross abuse of the criminal jurisdiction; but certain it is, if this be an experiment, as the gentleman from Allegheny says, and it should prove to be unfortunate, it would be still more unfortunate if the civil jurisdiction was increased from \$100 to \$300.

It must be well known to a large majority of the members of this Convention, and particularly to the lawyers, that nearly one-half of the litigation of this Commonwealth, numerically, consists of issues regarding amounts under \$300. That being so, I would not be in favor of making courts competent to have such cases under their jurisdiction, more than we now have.

Again, the great evil, as I understand, of the present system as we have it is the abuse of the criminal jurisdiction of the inferior magistracy. Why, sir, there are numbers of cases that if they were stated to this Convention would simply astonish it. In some cases a man is brought before them at any hour of the day; he is brought from one section of the city to another, and he is charged with the commission of a crime. In a great many instances evidence is taken not sufficient to the mind of the alderman to bind the person over, and the case is continued, perhaps for a week. Bail is demanded for him to appear at the day fixed for the adjourned hearing. On that day the parties appear. No more testimony perhaps is taken, the prosecutor not having any case, and the hearing is again adjourned for another week or for another day. In the meantime the alderman gets his additional costs out of the defendant; and so it goes on from time to time until at last perhaps the whole matter is abandoned or it becomes absolutely necessary that a decision shall be rendered.

Mr. TEMPLE. I should like to interrogate the delegate.

Mr. J. R. READ. Certainly.

Mr. TEMPLE. I would like the gentleman to state whether he does not know that the alderman generally acts upon the advice of the counsel employed by the prosecutor, and whether the prosecutor does not generally proceed upon the advice of his counsel.

Mr. J. R. READ. That may be true, or it may not. If it is true it should not be true. I say, sir, that no alderman or justice of the peace should so trifle with the liberty of any citizen of this Commonwealth as to bind him over from day to day, extorting from him bail, because the counsel for the prosecutor or the prosecutor desires it. I believe that when a person makes a charge of a criminal offence against any citizen he should be prepared when he makes the charge.

Mr. TEMPLE. I should like to ask a question. I ask whether the gentleman has ever been accommodated when he has represented the prosecution in the manner which he has indicated to the committee?

Mr. J. R. READ. I do not know, sir, whether I have or have not been. It is quite likely, if it is the custom, that I, as a member of the bar, may have availed myself of that custom; but at the same time that does not exalt the custom or make it any better than it is, for it is simply iniquitous.

I believe it is exceedingly important that we should get a better class of gentlemen for these positions than we have had in the past; but in saying this I do not wish to be understood as going quite so far as my learned colleague (Mr. Cuyler.) I do not think that the instances which are complained of are the rule; I believe they are the exception; but unfortunately they furnish too many exceptions to the rule for us to be satisfied with its continuance.

Mr. Chairman, the amendment offered by the gentleman from Allegheny provides for an election of these judges or police justices—and I am sure I am not tenacious about the name, I do not care what they are called—in small districts. That will not cure the evil, because, as was said by the gentleman from the Fourth district, (Mr. Simpson,) it is hardly possible to get the right kind of person to occupy these positions where the vote for them is limited by such a small number as is comprised within the limits of a ward. It is absolutely necessary that we should present the candidates, whoever they may be, to the voters of the city,

because they hold in their hands, they hold subject to their adjudication, the property of every citizen in this city; it is not confined to any one ward; and they also hold in their hands and subject to their adjudication the liberty of every citizen in this city. That being so, I can see no sound reason why they should not be elected by the people of the city, and then by the requisite legislation afterwards located to the different parts of the city as may be found necessary.

For these reasons I am opposed to the amendment offered by the gentleman from Allegheny, and trust that it will be voted down; and at the proper time I shall offer an amendment to the amendment of the gentleman from Lycoming, to insert one hundred dollars in place of three hundred dollars.

Mr. CARSON. Mr. Chairman: I will favor the section as reported by the committee with the amendment offered by the chairman of the committee, and in reply to the gentleman from Allegheny (Mr. Ewing) who has made the only objection that has been made, as I comprehend the argument, against the section, I will say that this office would not be an insignificant one, but it would be an important and honorable judgeship. The jurisdiction would extend to thirty thousand people. If you will look at the population of the several counties of the Commonwealth of Pennsylvania, you will find that in 1850 forty counties, and in 1870 twenty-seven counties, did not have a population exceeding that number; and yet we all know that the best jurists of the State and of the nation have not considered it beneath their dignity to preside over the courts in these counties.

Mr. LITTLETON. Mr. Chairman: I do not desire to detain the committee, but I cannot allow this question to be voted upon without saying one word in favor of the section as reported by the committee, and I do most earnestly hope that that section, with the proper amendments proposed by the chairman of the committee, will be adopted.

There may be in this article reported by the Judiciary Committee other clauses which will be of great benefit to the city of Philadelphia; but I do not think in all of them, take it altogether, there is a single section that will prove of so much benefit to us as the adoption of the present section now before the committee. I think it is of great importance to us.

Gentlemen have argued, the gentleman from Butler (Mr. J. N. Purviance) particularly, that this provision is special in its nature; that we are here ordaining an organic law, and that we ought not to legislate for special cases. I do not think it is liable to that objection. It is our duty to look at the condition of the State and its population; one portion in the rural districts, scattered over an extensive territory; another, congregated in cities; and to provide for the wants of both. I think it is right, therefore, for us to legislate, if I may use that term, for the people living in the cities as well as those who reside in the rural portions of the State.

Again the gentleman from Butler tells us that this proposition creates a new office. True; but it abolishes an old one, and a very bad one. I think of all the offices now existing in the city of Philadelphia, none could be so readily abolished, to the benefit of the community, as this one.

I trust that the Convention will adopt this measure without paying special attention to these numerous objections, such as that urged by the gentleman from Allegheny (Mr. Ewing) that it is an experiment. Sir, has it come to this, that in this age of progress any principle is to be denied or derided because it may be termed an experiment? We might go into history, into science in its various fields, and touch upon experiments that have proved glorious successes. The Declaration of Independence itself was an experiment, but it was a success; Fulton's steamboat was an experiment, but it carries the commerce of the world; Morse's telegraph was an experiment—

Mr. EWING. Allow me to ask the gentleman, did Fulton, when he made his first steam engine, fix it so that he could not make necessary changes when he found that experiment would not work?

Mr. LITTLETON. Fulton did not know anything about the aldermanic nuisance in Philadelphia. If he had, he would have so arranged that it never would have existed. [Laughter.] I hope that this Convention, with the wisdom of a Fulton, of a Morse, of a Franklin, so to speak, will abolish forever that which is to us a nuisance unbearable in whatever aspect you look at it.

Mr. TEMPLE. There is one reason that I expected would have been advanced in support of the abolition of the office of alderman, which has not been spoken of,

and to my mind, it is the cause of the greater part of the complaints embodied in the letter of Mr. Lea, which has been read. I was in hopes that my colleague, the distinguished delegate from the third district (Mr. Littleton,) would mention it while he was upon the floor; but as he has not done so, I will state it for the consideration of the committee.

The office of alderman in the city of Philadelphia was not considered so great a nuisance until the Legislature, for purposes best known to themselves, saw proper to extend the jurisdiction of aldermen above and beyond the jurisdiction which they had always had under the old Constitution. The very moment the board of aldermen was constituted in the city of Philadelphia, the office of alderman became a stench in the nostrils of all honest people. It became so simply by reason of the fact that the board of aldermen, not sitting as justices of the peace or as aldermen performing their proper functions, saw proper to so far transgress the law of the land that their office became to a certain extent fouled and corrupted.

Mr. HANNA. Will the gentleman allow me to ask him what law of the land he refers to?

Mr. TEMPLE. I refer to the law of the land which protects freemen in their right to have their votes counted when they are cast in the ballot-box, which was violated by the registry law, passed in 1869.

I was about to say, Mr. Chairman, that if these extra judicial, or rather political, powers had not been placed in the hands of the aldermen, in my judgment, this crying evil never would have existed in the city of Philadelphia. I am willing to admit that there are certain abuses, probably, in the office of alderman which require correction. I am not ready to stand here and say that this portion of our judiciary is as pure and incorruptible as it ought to be; but I say to the committee that, in my opinion, if the courts contemplated by this section are established, in less than five years from the time of the adoption of the Constitution a far greater cry will come up from the people of this community to have these courts abolished. With all the evils attached to the office of alderman, if you will strip them of political power, if you will take away from them the right to sit in judgment upon the political franchises of the people, if you will confine them strictly to their duties as aldermen and justices of the peace,

I believe it will be much safer to leave this subject as it is under the section in the old Constitution, or adopt one similar to that offered by the delegate from Allegheny (Mr. Hay.)

I can easily conceive that the persons who would be likely to become judges in these minor courts in the city of Philadelphia would not be of that class of the profession who would tend to dignify the office. It has been stated, I believe truthfully, by the delegate from Allegheny, (Mr. Ewing,) and I do not think it was successfully controverted by what was said by the gentleman from Montgomery, (Mr. Corson,) that the class of persons who would seek to administer justice in these minor courts would be such as would not be likely to confer upon the courts any great amount of dignity.

Let us look for a moment at the jurisdiction these courts would have, because if they are to have no more jurisdiction than the aldermen have now, I claim that a man who is not learned in the law is quite as competent to perform that duty as a lawyer would be. If their jurisdiction is to be extended, if they are to be surrounded by a jury of six men, as they are now in the State of New Jersey, for the trial of civil causes, if they are to have final jurisdiction in minor criminal offences, it is a very different thing; but if the office of alderman or justice of the peace is to remain as it is, so far as its jurisdiction is concerned even under this new section, I cannot see why we should place in the Constitution a clause requiring that officer to be a person learned in the law.

It has been urged here by the gentleman from the second district (Mr. J. R. Read) that great abuses have occurred in the office of alderman within his knowledge. I have no doubt of that; but I do say (and I think the gentleman might have answered the question that I put to him directly) that in many instances the profession are responsible for those abuses. I know, so far as my practice goes, that aldermen have often said to me when I would complain about the abuse to which the gentleman referred, "Well, Mr. So and So, counsel on the other side, insisted upon it." Counsel do insist upon it, and I find that gentlemen in this committee will approve of that.

I believe, sir, that if we adopt this section, we shall do away with a jurisdiction and a court quite as respectable now

as the new one put in place of it will be in the next five or ten years.

Mr. BOYD. Mr. Chairman: As a member of the Judiciary Committee, I was extremely reluctant to make any change in regard to the aldermen and justices of the peace, nor did I consent to it until evidence was adduced before that committee which I regarded, and I may say many other members of that committee regarded, as conclusive as to the necessity of the change that is proposed by the section under consideration. That evidence was regarded as of the highest authority. We could not well have had stronger testimony upon the subject than that which we had. It is borne out and sustained for the most part by nearly every delegate in this Convention from the city of Philadelphia.

If the committee had been aware that there was such a county as Butler in this State, with a delegate representing it on this floor, I think it highly probable that I should have, upon my own authority, respectfully invited him to come before the committee for the purpose of enlightening them upon this subject, [laughter,] and we might thus, perchance, have spared that distinguished gentleman the painful duty, as I suppose he felt it to be, of rising upon this floor and—if not deliberately reading out of the city—respectfully inviting one of the gentlemen of that committee, and one of the ornaments of this city as a citizen and a member of the bar, to leave the city if he did not like to live in such a place as this. It may be all very well for a gentleman representing such a county—for I find upon looking at my map that there is such a county and it has some six or seven thousand taxable inhabitants [laughter]—to come here and undertake to instruct the people of this city and those who represent them, those who were born and raised in the midst of the people here, and who, it is to be supposed, should know something upon this subject. It may be all very well for him to come here and make a personal fling at a gentleman on this floor because he saw fit, upon his responsibility as one of the members of this body, to make a statement that I can aver to be true, if reputation has anything to do with the affair. I live so near Philadelphia and am so much in it that I claim to be as competent to testify as the gentleman from Butler, who perhaps was never in the city before he came to this Convention and doubtless had never heard

of it. [Laughter.] I should certainly think that I would know as much on this subject as he does, and I do say that for the last ten or fifteen years the aldermanic system in the city of Philadelphia has been a disgrace, and has been so understood and known, at least throughout the counties bordering on the city. I know of two gentlemen in my own town who happened to come down to the city on one occasion to have a good time, and getting a little too much beer on, they were picked up by one of the street officers, carried before an alderman and there blackmailed, one out of \$35, which was all the money he had, and the other had to put up his watch for the balance he had to pay. [Laughter.] These things are notorious, they are of common occurrence; and a remedy is demanded of us.

The gentleman from Allegheny (Mr. Ewing) has favored us with many objections to the proposition reported by the committee. Allegheny county is not affected by it. I understood the gentleman himself to say, a moment ago, that Pittsburg had not the population required to come within the provisions of this section, but they hope to have, and possibly might have a population equal in amount to that stated in the section, and therefore it would apply to them. The gentleman might as well wait until he is hurt. It may be that Pittsburg will never attain the requisite number. It may be that the proposed consolidation there will not take place. But, sir, he argues before you on a basis which is purely theoretical, not founded upon any practical information or knowledge, and asserts, as a reason for his opposition to this measure, that he does not believe there is a lawyer in Philadelphia of respectability who would consent to act as judge of such a court, and that none but shysters would be willing to take such a position. I understood him to say that it would be of no avail in the city of Pittsburg, because there was no lawyer there but what was too eminently respectable ever to take a position of this kind. It may be that some very respectable people could be got from other places to go out there and hold a court of that kind. I will guarantee to insure Pittsburg a gentleman of that character if they have no one who can afford to take a position of this kind.

Mr. HAZZARD. May I ask the gentleman a question?

Mr. BOYD. Certainly, with the greatest pleasure.

Mr. HAZZARD. I should like to know whether, if we strike down the aldermanic system in this city, they will not give one hundred and seventy thousand majority against the Constitution? [Laughter.]

Mr. BOYD. I do not care if they do. As far as I comprehend the Constitution that is to be presented to the people, that is just what I want; and if the kind of nonsense is to be introduced into it that has been argued and voted in committee of the whole, I have no apprehension at all that it will ever be adopted by the people. I assume, of course, that there is respectability and responsibility left among the people as yet; and when we hand to them, as we propose to do, a volume containing five hundred or six hundred pages, and call it the Constitution, I do not suppose anybody will ever read it, much less vote for it. By the time all the matter that has been adopted in committee of the whole, and is likely to be, goes through second and third reading, it will be more like one of the pamphlet laws that we used to have in 1841 or 1842; and people do already regard our articles pretty much as acts of Assembly, and one distinguished member on this floor has stated that it will all amount to nothing, the Legislature will repeal it next session anyhow. [laughter,] under the idea that it is legislation; and that is about all that can be fairly claimed for it so far as we have progressed!

But it does seem extraordinary that when we have a measure proposed here which is a reform, and which the gentlemen from Philadelphia upon this floor assert is a necessity, that courtesy cannot be extended to those gentlemen, they being willing to take the responsibility. I do not see why gentlemen from the country who are not affected by it should array themselves in such hostility to a provision of that kind, which, as I aver in conclusion, was reported upon testimony before the committee of a character that was conceived to be so reliable that we could not get away from it or that portion of us who were disposed to make any change, without doing violence to the almost sworn facts we had before us on this subject.

I therefore trust that the amendment of the gentleman from Butler, who is interposing a difficulty here, will be voted down, and that the section will be substantially adopted. It may be as my friend from Philadelphia (Mr. Cuyler)

says, that it can be improved in many respects; and let us go to work and improve it, or amend it if it can be amended. If any gentleman here can do it, let him make a proposition. It is the best the Judiciary Committee could get at. It was submitted by Mr. Cuyler, a man competent and able to do so, and the members of the committee were not able to improve upon it more than it is in its present shape. With this condition of affairs it does seem to me that the report of the committee should be supported.

Mr. BIDDLE. Mr. Chairman: Unless we shut our eyes to evidence no man here can doubt that enormous evils now exist in the manner in which justice is administered by what is called the local magistracy of our large cities, and I do not mean by any means to confine this remark to the city from which I come. Whether this section, as it is reported by the Committee on the Judiciary, is going to cure the evils, of course must be problematical; but that some change is needed no one can deny. I do not know whether there is an amendment to the amendment pending or not; but whether there is or not, I will indicate my views upon the section and how far it ought to be changed.

The CHAIRMAN. The Chair will inform the delegate that there is an amendment to an amendment pending.

Mr. ARMSTRONG. If the gentleman will give way for a moment I should like to raise a point of order, which I believe ought to be raised for the convenience of our proceedings. If I understand the proper relations of parliamentary rules to this question, the persons who favor any pending proposition have the right to perfect it; and if a motion is made to strike out and insert, it is virtually the offering of a substitute. Even if that substitute had been first in order in point of motion, the friends of the measure have a right, notwithstanding that, to move their amendments to the pending section, and those amendments would take precedence of the motion to strike out, upon the general parliamentary principle that the friends of a measure have a right to perfect it before the question shall be taken upon striking it out entirely.

With this view I would ask the Chair to reconsider the decision which was formerly made. I know how easy it is in the haste, oftentimes the necessary inadvertence of decision, to make hasty and wrong

decisions. I believe the Chair inadvertently fell into error on that question. I believe it would be better now to go back to the correct parliamentary ruling on this subject, as I believe, and allow the friends of the measure to perfect this section by such amendments as they will propose. In that event the amendments suggested by the gentleman from Philadelphia and others would come up *seriatim*, and would be voted upon until the friends of the measure had perfected it to their own intent; and when so perfected, any motion then to strike it out and substitute something else would be in order.

I further call the attention of the Chair to the amendment which I will propose in the twenty-eighth line to correct a mere clerical error. There ought to be inserted after the word "salaries" the words "to be paid by said city." That was the intention of the committee, but the words were omitted by a clerical error. I hope that so far it may be amended by common consent.

The CHAIRMAN. The Chair would simply remark that he does not regard that he committed any error in the decision he made. The Chair considers that the parliamentary rule as to receiving an amendment to an amendment was observed in this case; and in justification of himself he will make the remark that the paragraph, not the section, was under consideration, and the delegate from Lycoming moved to amend by inserting certain words. The delegate from Allegheny moved to amend by striking out and inserting. That was an amendment to the amendment, within the rule as understood by the Chair. The Chair holds in his hand that which he regards to be the rule as regulating the reception of amendments.

"When an amendment is proposed by the insertion or adding of certain words, the proposed amendment may itself be amended in three different ways, viz: by leaving out a part, or by inserting, or by leaving out and inserting."

That is what was done in this instance.

Mr. BIDDLE. Mr. Chairman—

Mr. HAY. If the gentleman from Philadelphia will permit an interruption, I desire to say that in order to permit his amendment to be offered now, I will withdraw the amendment I offered and permit his to be read and disposed of.

The CHAIRMAN. The amendment to the amendment is withdrawn.



Mr. BIDDLE. I offer then the following as an amendment to the amendment

Mr. ARMSTRONG. Will the gentleman wait until I move the formal amendment which I indicated, after the word "salaries" in the twenty-eighth line, to insert the words: "to be paid by said city." I hope these words may be inserted by common consent.

The CHAIRMAN. If there is no objection, by unanimous consent the amendment first indicated by the delegate from Lycoming will be inserted as part of the paragraph. The amendment now pending is the amendment of the delegate from Lycoming to limit the jurisdiction to three hundred dollars.

Mr. BIDDLE. I will hand up my amendment in a moment. I wish to indicate my views first and may as well do it on the section.

I was about saying that the evils being admitted, we are bound to provide a remedy if we can. This section certainly proposes a very radical change in the system of administering justice both criminally and civilly in small amounts. It proposes first to pay this magistracy by a fixed salary. I consider that an enormous gain. I do not know what the proportion is; I doubt if I am wrong in saying, however, that nine-tenths of the cases of oppression that have been referred to and which we all know do exist, are caused by the system of fees. You make it the interest of the magistrate to foment petty litigation and then you condemn him for it. You expect too much from human nature. These sums which to us are inconsiderable, the two, three, or five dollars that are extracted from the hard earnings of the classes who can least afford to pay them, are great temptations to many of these magistrates. By the section as reported you cut off at once that fruitful source of corruption and oppression. So far I like it very much. I doubt however, as to the jurisdiction as to the amount. I think it too high. I prefer the old limit of one hundred dollars. I think that is quite high enough, and my amendment will point in that direction.

I think the number of courts provided for by this section, the divisor being thirty thousand, is too large. I would make that forty-five thousand or fifty thousand. I think the term of office too long. I would make it five instead of seven years. I suppose these are matters of detail as to which the gentleman from Phil-

adelphia (Mr. Cuyler) and the chairman of the Judiciary Committee will hardly differ.

Mr. CUYLER. I do not care about those points except as to the number of courts. I have been appealed to to have the number of courts based on a basis of twenty thousand. I am surprised that my colleague should suggest fifty thousand. As to the other matters of detail I do not care.

Mr. BIDDLE. I have my own views but I do not want to dwell upon those points. I come to what strikes me as much more important. I doubt very much, and doubting as much as I do, I shall vote against what is technically called a judge learned in the law; that is, a member of the profession of the law—it amounts to nothing else. I do not believe these courts, if you affix the other limitations proposed by this section, will be as well administered by lawyers of five years standing, as by citizens who do not necessarily have that technical qualification. I would have a man familiar with the general principles of the law, but it occurs to me, and my experience warrants me in what I am saying, that petty controversies are better settled by upright men of strong, vigorous intellect, and good native parts, than by the younger members of the profession, who would look rather to the technicalities of the system under which they practice, than to its real value and merits. I endorse fully what has been said by one of my colleagues from Philadelphia (Mr. Simpson) in regard to many of the magistrates to whom he referred. I could name others, alderman Binns, alderman Badger, and alderman Kenney,—who, though nominally a lawyer, never practiced in any court; I doubt if he ever made a motion. These were all men of the highest character, and of the highest worth, who administered justice with the utmost integrity, and with advantage both to the suitors and to the community.

"A little learning is a dangerous thing."

You lose the essence in mere adherence to form, I fear, if you regard this qualification as essential. I would much prefer to have as magistrates citizens having the qualifications of justices of the peace. If they be lawyers, if the voters of a district choose to re-elect them, be it so; but I would place no restriction on the choice of the electors. I see no value to be gained by reason of a little technical learning which would be brought to the office,

and I think I see great disadvantages in it.

Now, I come to another point which I deem of vast importance. Whether the language in which I have shaped my amendment is the best that could be employed, is perhaps a matter of considerable doubt. The thought, however, has value. You propose to elect, no matter what the divisor is, from sixteen to thirty magistrates, and you are going to elect them on a general ticket by the qualified voters of the city. I see great value in that, because you give the body of the whole community the right to select inside of limit; for it is from the small districts of average limitation that I think a great many of the evils of the system have sprung. I do not think that all of these magistrates should be members of either political party exclusively. Just look now at what enormous power you are placing in their hands. Not to speak of the civil jurisdiction, which will be quite extensive, it will affect the rights and interests of a very large portion of the community. Even if you limit this jurisdiction at one hundred dollars, you place the primary administration of the whole criminal jurisdiction of the county in the hands of these men. Every one of them will be a committing magistrate. Every one of them will have the power to bind a man over for trial at the court of quarter sessions or at the court of oyer and terminer.

I think, therefore, that in communities as large as those referred to by this paragraph of the section under consideration, communities of two hundred thousand and upwards, it will be most unwise as well as most unfair to have all these magistrates in the interests of one political party. I do not care which party it is. That is a matter of absolute indifference. But gentlemen must see that in times of excitement, in times of popular commotion, these powers may be very greatly abused if they are to be wielded exclusively by men of the same political conviction. I would, therefore, like to see applied to the election of these local magistrates the same principle that has been applied to the inspectors of elections, that has been applied, we suppose with some advantage, to the election of delegates to this Convention.

I do not want to occupy more time, and will therefore simply indicate my amendment. I would strike out in the first sentence "three hundred" and insert

"one hundred." In the same sentence, immediately following, I would strike out "thirty thousand" and insert "fifty thousand."

In the second sentence I desire to strike out all after the word "by" down to and including the words "judicial districts," and insert "citizens having the qualifications of justices of the peace."

In the next sentence I wish to strike out "seven" and insert "five"; and also to add to the end of the sentence "in the manner the delegates at large from the State to this Convention were voted for."

Mr. CUYLER. If my colleague is through I only want to say three sentences.

The CHAIRMAN. The amendment will first have to be placed before the committee of the whole.

Mr. CUYLER. What I have to say will not interfere with that. I desire simply to say that with very much of that which has fallen from my colleague (Mr. Biddle) I have no controversy whatever. As I said in my former remarks, I am not tenacious about precise words, if you will only give me the substance of what is here provided for, that is, if you will give me a magistracy of the city of Philadelphia, elected on a general ticket, paid by fixed salaries, and that the name of alderman, which has become odious, shall be abolished. If these three cardinal features are preserved, I will have no controversy with any gentleman who differs with me on the matter of detail. That is all I have to say.

Mr. HANNA. Before my colleague takes his seat, I desire to ask him if he does not think a magistrate should be learned in the law?

Mr. CUYLER. I will not make a feature of that. I think they all should be learned in the law, according to my notion of what any magistrate should be. But still if that does not meet with the approbation of this committee of the whole, they may use their own discretion about it.

Mr. CORSON. Let me address a question to the gentleman. If we strike out "learned in the law" what is to prevent you from electing again the same people that have disgraced your city?

Mr. CUYLER. I think they should be learned in the law.

The CHAIRMAN. The Clerk will read the paragraph, as the gentleman from Philadelphia (Mr. Biddle) desires to amend it.

The CLERK read as follows:

"In each city having a population exceeding 200,000, there shall be established, in lieu of the office of alderman and justice of the peace, as the same now exists, one court (not of record) of police and small causes not exceeding one hundred dollars for each 50,000 inhabitants. Such court shall be held by citizens having the qualifications of justices of the peace in which said city is located. Their term of office shall be five years, and they shall be elected on general ticket by all the qualified voters of such city in the manner the delegate sat large from the State to this Convention were voted for. They shall be compensated only by fixed salaries, to be paid by said city, and shall exercise such jurisdiction, civil and criminal, as is now exercised by aldermen and justices of the peace and such other jurisdiction as may be, from time to time, prescribed by law."

Mr. WHERRY. I desire to ask whether that is an amendment in the nature of a substitute?

The CHAIRMAN. This is the amendment of the gentleman from Philadelphia to the amendment of the gentleman from Lycoming.

Mr. WHERRY. I was about to indicate a difficulty which occurs to my mind—

Mr. CUYLER. If the gentleman from Cumberland will pardon me, let me suggest to my colleague that he submit his amendments separately, so that we can have a distinct vote upon them.

Mr. CORBETT. We can call for a division.

Mr. CUYLER. Very well.

Mr. WHERRY. I agree with everything that has fallen from the lips of my distinguished friend from Philadelphia (Mr. Biddle) with one exception. I cannot see, and I call to this the especial attention of the chairman of the Committee on the Judiciary, how this election by general ticket can be applied to ten, fifteen or twenty separate, independent territorial districts. I think I understand something about this matter of districts and of offices.

Mr. ARMSTRONG. Pardon me. There is no district provided for. It is upon general ticket throughout the city.

Mr. WHERRY. The magistrates are voted for at large. But I understood from the gentleman from Philadelphia (Mr. Cuyler) that these courts were to have separate territorial jurisdiction.

Mr. CUYLER. I never dreamed of such a thing.

Mr. WHERRY. Then, sir, I ask how are these courts to be located? Are they to be peripatetic? Are they to be permitted to locate themselves where they please, and migrate when they please? To settle down, all of them, in one part of the city? Will it constitute a local judiciary at all on that principal? It seems to me that if this is to be a substitute for the aldermanic system, for the system of justices of the peace—in other words, if it is to be a local judiciary at all—it must be fixed, and if you do not fix it, it will not fill the bill, it will not answer the purposes of that kind of a judiciary. I desire to know from the chairman of the Committee on the Judiciary how it is proposed to locate these courts; on what principle they are to be distributed; how they are to be territorially assigned. It certainly is not fixed either in the proposition of the committee or in the substitute of the gentleman from Philadelphia (Mr. Biddle.)

Mr. CUYLER. We leave that to the Legislature.

Mr. WHERRY. But the chief objection to that in my mind is that if you leave to the Legislature the dividing of this city into judicial districts and the locating of these judges in these judicial districts, you put into the hands of the Legislature a power enormously greater than they have ever before possessed. They can control this judiciary to any extent they please if they are permitted to fix the territorial limits of the districts.

Then another difficulty is that under this plan of election at large of twenty or thirty judges, with territorial jurisdiction over the whole city, nine-tenths of the wards of the city may be left without a convenient subordinate judiciary; you may have ten, twenty or thirty such courts and yet in nine-tenths of the wards there will not be a single judge. Will that answer the purposes of a local judiciary? Is that what gentlemen want in the establishment of this judiciary?

Then if I understand the gentleman from Philadelphia (Mr. Biddle) he proposes to apply a limited system of voting to this judiciary. I ask how can the will of the voters in a particular section of the city be expressed in the selection of a judge for their court under the limited vote, when it is not understood what candidate upon the ticket at large is to be the judge for that particular section. Is the Fourth ward to select a judge for the Twenty-second ward? I can easily under-

stand how the very worst men in the city of Philadelphia could be able to impose a bad judge upon the most respectable ward of the city. It would be done under this system.

There are difficulties which the chairman of the committee or either of the distinguished gentlemen from Philadelphia are perhaps able to explain a way and must explain before I can possibly give my assent to this proposition. I agree entirely with all of its principles, and willing to endorse it from first to last if I can understand how it can be applied.

Mr. ARMSTRONG. It is very evident that this debate cannot be concluded this evening. This is a very important section, and I move that the committee do now rise, report progress, and ask leave to sit again. We cannot get through the section to-night, evidently, and I think we had better come to it afresh on Monday morning.

Mr. BUCKALEW. Before the motion is put I should like to inquire whether there is an amendment to an amendment pending.

The CHAIRMAN. The question before the committee is on the amendment of the delegate from Philadelphia (Mr. Biddle)

to the amendment offered by the delegate from Lycoming (Mr. Armstrong.)

Mr. BUCKALEW. It is not susceptible of further amendment.

The CHAIRMAN. It is not susceptible of further amendment.

Mr. ARMSTRONG. I renew my motion that the committee rise.

The motion was agreed to, and the committee accordingly rose; and the chairman (Mr. Harry White) reported that the committee had had under consideration the article reported by the Committee on the Judiciary, and had directed him to report progress and ask leave to sit again.

Leave was granted to the committee to sit again on Monday next.

Mr. ADDICKS. I move that the House adjourn.

Mr. STRUTHERS. I wish to move that when the House adjourns it adjourns to meet on Monday next.

The PRESIDENT. A motion to adjourn has been made, and another motion is not at present in order. The question is on the motion to adjourn.

The motion was agreed to; and (at six o'clock and five minutes P. M.) the Convention adjourned until Monday morning at ten o'clock.

# NINETY-SEVENTH DAY.

MONDAY, May 11, 1873.

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

Prayer by Rev. Jas. W. Curry.

The Journal of the proceedings of Friday last was read and approved.

## PETITIONS AND MEMORIALS.

The PRESIDENT presented a memorial asking for the recognition of Almighty God and the christian religion in the Constitution, which was laid on the table.

## REPORTS OF COMMITTEES.

Mr. MACCONNELL. As acting chairman of the Committee on Declaration of Rights, I submit a report, which I ask to have read.

The report was read as follows:

"The Committee on the Declaration of Rights respectfully submit the following report:

"Since this committee submitted their former report there have been referred to them numerous petitions asking the Convention to embody in the Constitution an acknowledgment of Almighty God as the ultimate authority in civil government, of the Lord Jesus Christ as the ruler of nations, and of the Bible as the supreme standard of righteous laws, &c. The subject of those petitions is an important one, and your committee have given it a correspondingly serious consideration. But inasmuch as they embodied in their report heretofore made an acknowledgment of Almighty God, and an humble invocation of His guidance in our future destiny, they are of opinion that no further report on the subject is necessary. They, therefore, ask to be discharged from the farther consideration thereof, and for that purpose ask the adoption of the following resolution, viz:

"Resolved, That the Committee on the Declaration of Rights be discharged from the further consideration of the subject."

The resolution was read twice and agreed to.

## LEAVE OF ABSENCE.

Mr. CASSIDY. I desire at this time to ask leave of absence for my colleague

(Mr. Biddle) for a few days, in consequence of a death in his family.

Leave was granted.

## THE JUDICIAL SYSTEM.

Mr. EWING. I move that the House resolve itself into committee of the whole for the further consideration of the article on the judiciary.

The motion was agreed to; and the House accordingly resolved itself into committee of the whole on the article reported by the Committee on the Judiciary, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose at its last session, the question before the committee was on the amendment offered by the delegate from Philadelphia (Mr. Biddle) to the amendment of the delegate from Lycoming (Mr. Armstrong.)

Mr. HANNA. Let the amendment and the amendment to the amendment be read.

The CHAIRMAN. The amendment is to the last paragraph but one of the fourteenth section. The paragraph will be read, also the amendment of the delegate from Lycoming will be read, and then the amendment offered by the delegate from Philadelphia.

The CLERK. The paragraph is as follows:

"In each city having a population exceeding two hundred thousand there shall be established, in lieu of the office 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 to be paid by said city, and shall exercise such jurisdiction, civil and criminal, as is now exercised by aldermen and

justices of the peace, and such other jurisdiction as may be from time to time prescribed by law."

The amendment proposed by the gentleman from Lycoming (Mr. Armstrong) was to insert after the word "causes," in the twenty-second line, the words "not exceeding \$300." The gentleman from Philadelphia (Mr. Biddle) proposed to amend the amendment by making "three hundred" read "one hundred;" by striking out "thirty," in the twenty-second line, and inserting "fifty;" by striking out all after the word "by," in the twenty-third line, to and including the word "district," in the twenty-fifth line, and inserting in lieu thereof the words, "citizens having the qualifications of justices of the peace;" by striking out the word "seven," in the twenty-sixth line, and inserting in lieu thereof the word "five;" and after the word "city," in the twenty-seventh line, inserting the words "in the manner the delegates at large from the State to this Convention were voted for."

MR. ARMSTRONG. I call for a division of the question and ask that the question be put on the first amendment, and so on *seriatim*; and upon that I will simply call the attention of the House to the fact that the amendment proposed by me was to insert the words, "not exceeding \$300." The amendment to the amendment is to make it \$100. I will simply remark that as the limitation is a maximum amount, \$300, I think it would be wise to leave it so. I know in my own county, where we have a court of this sort, the maximum is \$300, and no appeal is allowed, except by affidavit of defence upon the merits; and it has proved to be a very great advantage. The Legislature can limit it. But as it is a matter of mere detail, I am not at all tenacious about it, and hope the vote will be taken on it.

MR. J. N. PURVIANCE. Mr. Chairman: I am free to say that it is with reluctance that I oppose the amendment now before the committee. It would be my pleasure to concur with the honorable delegates from the city who so earnestly support the amendment, if it were not for the principle which it embraces, and which, in my humble opinion, should not form any part of our organic law.

*First.* It legislates out of office all the aldermen and justices of the peace in the city of Philadelphia, lessens the term of their commissions, and is an invasion of their vested rights.

*Second.* It establishes police courts, providing for the election of some twenty judges, with such details as to their powers and duties that more appropriately belong to the Legislature than to a Constitutional Convention.

*Third.* The appropriate duties of the Convention are to declare general principles, and leave details to the Legislature. The section now proposed is a violation of this principle.

*Fourth.* It destroys uniformity in our judicial system.

*Fifth.* If such courts be necessary, the Legislature has, under the present Constitution, power to establish them, and to subordinate the aldermanic system to them.

To constitute these courts in the city of Philadelphia by constitutional provision, would be such a violation of established principle in organic law, as would never be ratified by the people. I do not want gentlemen to suppose that I am opposing it because it is for the city of Philadelphia—to remedy evils that it is said exist in this beautiful and great city; but I oppose it on principle, and for the reason that the evils under which her good citizens labor are to be remedied elsewhere, not here. We can, in general terms, grant the necessary power, but the Legislature must provide the details for carrying it into effect.

Mr. Chairman, I would refer gentlemen to the Constitution of Missouri, New York, Illinois, Massachusetts, and other States. In them they will not be able to perceive any special provision for the city of Chicago, or the city of Boston, or St. Louis, or New York. The general principle preserved in all the Constitutions is uniformity—similarity of judicial system—and this is what the people of Pennsylvania expect to have in their Constitution. Let us not by unnecessary amendments excite and provoke opposition. It is just what the class of men described by the distinguished gentleman from the city (Mr. Cuyler) want, and such as would enable them to overthrow all our work.

Mr. Chairman, I desire to say a few words in reply to the gentleman from Montgomery (Mr. Boyd.) He remarked in reference to the county which I have the honor in part to represent, that he did not know in what part of the State the county of Butler was situated until he examined the map—that it was in some obscure corner of the State, &c. I beg respectfully to inform the honorable gentleman that it is bounded on the north by Venango and

Mercer counties, on the east by Armstrong, on the south by Allegheny, and on the west by Beaver and Lawrence—and contains a population, at this time, of about forty thousand.

In agricultural products it is second in rank to but a few counties of the State. And when I say to the honorable gentleman that in mineral treasure the county of Butler is second to no county of the State, I want him to believe it. In coal, iron ore, limestone, and oil. When I say that no other county contains richer veins of bituminous coal, and more of them, I wish him to believe it. And when I inform him that in no county in the State are found larger or better seams of limestone, I wish him to believe it also. And when I say to him that in no county in the wide world is there found oil in greater abundance than in the county of Butler, I want him to believe that too. And if he has any doubt as to the intelligence, industry, enterprise, and honesty of our people, all his doubts would be agreeably removed if he should visit us, which I heartily wish he may do. Come with me, my friend from Montgomery, and see for yourself our beautiful towns and well-cultivated farms, our workshops, our mines and oil wells, our manufactories, our churches and common schools, and mingle with our clever, social and hospitable people, and you will no longer have to examine the map to find the county of Butler. You will have a vivid and pleasant impression, never to be erased from your memory.

Mr. Chairman, I appreciate the gentleman's desire for information. All great men are ever on inquiry and with them the appetite for knowledge never dies, except with the intellect. I am most happy to be able to impart to the gentleman from Montgomery the information he so much desires.

Mr. HANNA. Mr. Chairman: I regret to be obliged to differ with a number of my colleagues from the city upon this floor. I cannot favor this section of the report of the Committee on the Judiciary. I have several objections to the plan there proposed, and one is that I think the scheme is entirely foreign to the duty imposed upon us. We are called upon by this proposed section, in effect, to legislate—for it will be nothing but pure legislation if we adopt such a principle as this in the Constitution of the State. I would remind the committee of the whole that it would be entirely inconsistent with the

principles we have already adopted in the report of the Committee on Legislation. Why? Because we have adopted a plain fundamental principle, that the Legislature itself shall not interfere by special law with the internal police regulations of the cities, counties and boroughs of the Commonwealth; and yet we here propose in the State Constitution to lay down an inflexible special rule, applicable only to one or two cities of the Commonwealth.

I submit that that is entirely inconsistent with the course we have heretofore adopted. We are taking away from the people of the cities of the Commonwealth; we are robbing them of the vested right to which we say they are entitled; namely the right to govern themselves in all their municipal affairs. This section proposes to do away with a body of men who, from the earliest history of the Commonwealth, have been sustained by the people. We propose now to do away with the aldermen of the city of Philadelphia and other large cities. I need not remind you, Mr. Chairman, that in this section of the Commonwealth, these men have been maintained by the people as similar to a body of men in the city of London. When this colony of Pennsylvania was founded William Penn brought with his settlers, not only the laws of England applicable to the Commonwealth they were about to establish, but also many customs which to us are known as the customs of the city of London. This was one of these customs. The body of officers known as aldermen were incorporated into our system of jurisprudence in imitation of the body of aldermen which existed in London, and from that time to the present this system of the minor judiciary has existed. Many of them have been honorable, upright men. Some of their names have been mentioned on the floor of this Convention by my colleagues, and others could be mentioned. No fault was found with them, but the Legislature thought proper to throw around that body and the jurisdiction exercised by them certain restrictions. We must remember that from the earliest time all the officers of the Commonwealth, except the judiciary, have been paid by fees. These officers have been paid by fees. Almost all the officers of the Commonwealth, instead of receiving fixed and stated salaries, have been compensated by what are termed fees and perquisites.

It became necessary in time to adopt certain restrictions, as I have just stated,

relative to the exercise of the jurisdiction of these magistrates, and laws were enacted whereby if they exceeded in their charges the fees allowed by the fee bill they should be punished by indictment. I am happy to say that in the city of Philadelphia it has been seldom found necessary to invoke the law in this respect; but of late years it has been done in a few instances, very few, indeed. Any citizen of the city has his remedy whenever extortion has been practiced upon him, and the courts of our city are always prompt to exercise their power in affording a prompt and certain remedy.

The whole complaint, if any has existed—and I am free to admit that it has existed in some particular cases—can be traced first to the system of compensating the aldermen by fees. Again, the aldermen here, like the justices of the peace throughout the interior, have always been accustomed to take acknowledgments of deeds, mortgages and other papers. The Legislature, some years ago, thought proper to increase the number of notaries public. Acts of Assembly have been passed from time to time increasing their number until the notaries public are as thick among us as the leaves upon the budding trees. In this way, a large portion of the business of the aldermen has been taken away from them; and, unfortunately, some who did not properly realize the duty and the responsibility of their position and the integrity required of them, have been actually obliged in order to make a livelihood to charge in many cases illegal fees; but whenever these cases have been brought to the attention of the courts, the offending officer has been punished, and in one or more cases the commission has been taken away from the alderman for his disobedience and infraction of the law.

Mr. Chairman, complaints have been made by some of my colleagues in regard to this body of justices or aldermen; but I do submit that there is not universal complaint. The people have sent us no remonstrances, no memorials to abolish the body; and I do submit that instead of abolishing the entire body, and introducing into our midst these novel courts, we should seek to ameliorate the existing evils, rather than to destroy the system itself.

I admit that the amendment offered by the gentleman from Philadelphia (Mr. Biddle) will meet one great cause of complaint which has existed in regard to our

minor judiciary, and that is by reducing the number. Having done that we should fix stated and stipulated salaries of a reasonable amount. Let us pay the aldermen of the city of Philadelphia a liberal salary. If we reduce the number, we can give them reasonable salaries. Then we not only elevate the position occupied by them, but we remove from them all temptation to error and to fraud and extortion. I know from my experience with aldermen, that it would have this effect. I am not one of those who proudly say that they never practiced before an alderman or a justice of the peace. I would not say that, because for years past I have intimately known these men, and I know many of them to be reliable men, men of integrity, and they will be gladly placed in a position where they can afford to be independent. If we give these men stated and liberal salaries we shall place them in a position whereby they will be useful and respected in the community, and instead of in some cases promoting and encouraging litigation, they will be really peace-makers.

I object, Mr. Chairman, to the plan proposed because it introduces into our city a court of which some of the older gentlemen on this floor can remember they had a taste years and years ago. Then we had police courts in Philadelphia; we had the recorder's court, we had the mayor's court, we had a court of general session, and they became unpopular, and the people asked and demanded at the hands of the Legislature a change, a reform. They obtained it; but if we adopt this principle as reported by the committee on the Judiciary, the hands of the people of the city of Philadelphia will be tied if they find the experiment which is proposed shall be a failure. As my friend and colleague (Mr. Temple) prophesied the other day, at the end of five years the community of Philadelphia will be dissatisfied with this court of police jurisdiction and small causes. I say that we as a community require a body of men to whom the mass of the people can go with freedom. We want a magistracy known to the people. We are entitled to minor justices just as much as you are in the interior. You have your justices of the peace in every township, known to your citizens, familiar to them, whom the poorest of the land can approach with freedom. We want the same system in the city. We have a class of population who, instead of appealing to



members of the bar, would rather go to their neighbor, and ask his advice, and by whom he can have papers acknowledged and drawn, and in many cases invoke protection. I do submit that we do not want in the city of Philadelphia twenty-three courts which this section will give us. We want no twenty-three police courts scattered about the city of Philadelphia. It would give us just such a system as we see in the city of New York. There we have heard of a body of men, belonging to the legal profession, unfortunately known as "tomb-lawyers." You establish these police courts; give them the power to dispose either by jury or otherwise of offences and give them civil jurisdiction up to three hundred dollars, and you give us again courts, in the city of Philadelphia, which in time will be as odious to the people of Philadelphia as the marine court in the city of New York has been made odious to the citizens of New York. Gentlemen complain about the corruption of the aldermen—

The CHAIRMAN. The Chair must inform the delegate from Philadelphia that his time has expired.

Mr. TEMPLE. I move that it be extended.

The CHAIRMAN. The time will be extended unless five members object.

Mr. CARTER. I object.

Mr. LILLY. I object.

The CHAIRMAN. The delegate from Philadelphia will proceed.

Mr. HANNA. I will trespass upon the patience of the committee but a few moments longer. I have not taxed it heretofore. But I do submit that we from the city, when we are considering a subject so nearly related to us and in which we are so directly interested, should receive perhaps a little consideration.

I do hope, sir, that we shall not incorporate any such principle as this in the Constitution, because I firmly believe that if these police courts are established, they will, in time, be as odious as the marine court in the city of New York. Talk about the corruption and extortion of our aldermen! Why, sir, what did we see but a few months ago by reason of the corruption of these very police courts in the city of New York? Their judges impeached before the Legislature and removed from office. They were gentlemen learned in the law. Now you propose to give us in Philadelphia a body of police judges learned in the law. What assurance have we that we shall then be ex-

empt from extortion, corruption and partiality?

I do trust that the committee will carefully consider this subject; that they will not adopt this measure merely because it happens to be drawn by one of our colleagues, merely, because it is insisted that the Convention, and the Convention alone, can give any remedy in regard to certain evils. But, sir, we have the power to correct those evils in our own hands, and if the people of Philadelphia are not able to govern themselves, it is time we should know it. I do not believe that the people of Philadelphia cannot obtain redress. I believe they can. We know that the complaints of other cities have been answered and the Legislature has given them such legislation as they needed, and the time will come when all the reforms needed by the people of Philadelphia will be granted by the Legislature. I trust that the tax-payers of the city of Philadelphia will not be burdened with any such odious tax as this will cause and compelled to support from twenty-three to thirty courts of police and minor jurisdiction.

Mr. LILLY. I rise to a point of order. I want to have this matter of the extension of time settled. There were seven or eight gentlemen who objected with me when an extension was asked a few minutes ago. Now we want to know how this is to be got at. If we must rise, say so.

The CHAIRMAN. That question is not before the Chair at this time. The question is on the first division of the amendment of the delegate from Philadelphia (Mr. Biddle.)

Mr. LILLY. I think I have rights in this committee, and they have been invaded by the Chair.

The CHAIRMAN. The Chair did not design to invade the rights of any one.

Mr. LILLY. I respectfully appeal from the decision of the Chair.

The CHAIRMAN. There is no appeal allowed in committee of the whole.

Mr. LILLY. I think there is, under the rule.

The CHAIRMAN. The Chair decides otherwise. The question is on the first division of the amendment offered by the delegate from Philadelphia (Mr. Biddle.)

Mr. CUYLER. Is that on increasing the basis to fifty thousand?

The CHAIRMAN. No, sir; the first division is on striking out three hundred dollars and inserting one hundred dollars as the limit of jurisdiction.

Mr. CUYLER. I only desire to say a word on that. If the judges of these local courts are required to be learned in the law, as I am very firm in my opinion that they ought to be, then I think the jurisdiction should extend to three hundred dollars. If the amendment shall prevail which will dispense with their being learned in the law, then I think the less amount they pass upon the better. That reduces the whole argument, as it affects my mind, to a nutshell. I am in favor, after thorough reflection on the subject, of insisting upon the doctrine that they should be judges learned in the law; and that being the case, as we cannot take the vote on that until afterward, I hope the present amendment will not prevail and that the jurisdiction will be left at three hundred dollars.

Mr. HAZZARD. Having had occasion to examine this question, I must say that I agree with the gentleman who last spoke, representing the city of Philadelphia, in regard to the limitation as to the amount. It is well known to the Chair and to the delegates here that the people of this State have petitioned the Legislature very frequently to increase the jurisdiction of justices of the peace to three hundred dollars, alleging as reasons that the purchasing power of one dollar in 1810, when the jurisdiction of justices of the peace was limited to one hundred dollars, was about equal to the purchasing power of three dollars now, and because it requires no more knowledge of the law to collect a three hundred dollar claim than it does to collect a one hundred dollar claim. What reason can be given why these courts should be limited at all? You carry a note of ten dollars before a justice of the peace, and all the commercial law that applies to a five hundred dollar note will apply to it; and the ignorance of the justice that I have heard talked about in this Convention has nothing to do with the question. If he knows how to collect five dollars, he knows how to collect five hundred dollars, and as there is a right of appeal, the rights of either party cannot be invaded, and there is no reason why this jurisdiction should be limited to one hundred dollars. It has already been extended in seventeen counties of the Commonwealth to three hundred dollars.

I am opposed to the section upon another ground. You legislate the present magistrates in the city out of office. It may be that in the crowded part of the city the aldermanic system does not work very

well, and that the people are somewhat opposed to it. I have not heard whether the people are opposed to it or not. The lawyers who represent them here say they are. But, sir, these are eminently the courts of the people, and I am not so certain that they wish any change in regard to this system, especially in the rural part of this very county. Do these complaints come to this Convention from the rural parts of Philadelphia? Are the justices of the peace, or aldermen, as they are called, in the rural districts of this county of the same stamp as those in the city proper, and do you propose to destroy their office and take from them their vested rights and turn them out of office without any cause or complaint from the people? It seems to me that this is legislation, and very improper legislation.

I say once more that as a general thing these are emphatically the courts for the people, and in the districts outside of the cities the people are well satisfied with them. It is said that these officers are ignorant and dishonest. That is not the case in the rural districts throughout the State at any rate, or in the smaller cities of this State. They are about average men in their class. In a township where they put up a candidate for magistrate, he is generally a little more intelligent than the majority of his neighbors; and as to honesty and integrity he will compare favorably with others of his class. You take a man from the carpenters' bench, or from the plow, or from the forge, and you elect him a magistrate; he is not necessarily a lawyer; he does not get a knowledge of the law as a boy gets measles; he is nothing but about an average man in his class. As a general thing, he is an honest, upright man; but he is not a lawyer, and when his papers come up before the court to be reviewed, lawyers will get around and find that there is some mistakes in the forms of law.

We expect too much from these magistrates. We expect them to be immaculate. We suppose that justices of the peace cannot possibly err. We do not say so of all judges of the common pleas. Their judgments are taken up and reversed before the Supreme Court; but that is done under the sanction and regulation of legal procedure and that is all right. A judge of the Supreme Court may err; but if a justice of the peace does so, he is termed an ass. I suppose from what I have heard here in the city, that perhaps Dogberry is a very fair sample of these mag-

istrates; but, sir, it is not so throughout the State. You expect these men to be immaculate, but you find they are not, and so you propose to limit the jurisdiction of these courts and put in men learned in the law, who of course will never make any mistakes! It is only justices of the peace who, in the faithful discharge of their duties, make mistakes; and so you propose to put in gentlemen learned in the law and limit the jurisdiction to one hundred dollars! I should like to know what for? If you come to me as a justice of the peace, I collect a hundred dollar note and charge the costs to the defendant. If you come to me as an attorney with a claim of \$101, I charge ten dollars to collect it. There is no common sense in that. There is no reason why the jurisdiction should not be left entirely to legislative action hereafter, if it must be limited at all even to \$300, for the time will come when these magistrates will be able to collect even more than \$300, and ought to be invested with that power. The cost of collection nowadays has come to be a considerable item, and the magistrates, knowing just as well how to collect \$200 as \$100, can facilitate the business in their districts, and nobody is harmed, but very many benefited by a cheap mode of collection.

I do not know how they collect these things in Philadelphia and Pittsburgh and other cities. I do not know how you are going to make these men immaculate. I do not know how you are going to get them all to spell correctly. I did see one transcript taken up where the magistrate spelled spoon "*spune*;" but that comes near it, as near as the other man writing to his wife who spelled wife "*y-f*;" and does not "*y-f*" mean *wife* if language is meant to convey the idea? It is not just exactly the true way to spell it among some people. But they may not be immaculate in the law in orthography or in judgment; and neither is any other court. Even the Supreme Court reverses itself; and we very often good naturedly say the Supreme Court has had its last guess.

But it is said that these magistrates generally decide for the plaintiff. Well, I undertake to say to the lawyers in this Convention that in ninety cases out of a hundred the plaintiff is entitled to judgment. In the country a common farmer does not go and sue a man just for the fun of the thing as they do in the city, sometimes to hang up cases and gain time. They do not know there of the tricks of

the law that delay the collection of a claim, and do not go to law just on purpose to get time. If a man sues another in the rural districts, he owes him something and the only difference between them is as to the sum; the one does not intend to allow so much as the other asks. In ninety cases out of a hundred the plaintiff is entitled to something; the only question is as to the adjudication and ascertainment of the precise amount after deducting set-offs, &c. There are not ten cases in a hundred in which judgment for something does not belong to the plaintiff. But that is the argument gentlemen make in ridicule of the magistracy, they go for the plaintiff. So it is with the common pleas, as to eighty per cent. of the claims brought there. Does not the plaintiff eight times out of ten get his claim in the common pleas? And are the judgments in these courts a great majority for the plaintiff. But if a justice of the peace happens to give judgment in favor of the plaintiff, he is said to be the court for the plaintiff!

These things are all wrong. I object to this section also, because of the limit of one hundred dollars. I object to it because it is turning out men that the people are well enough satisfied with. I am dissatisfied with it because it is special legislation. I do not know that there ought to be anything done with it at all. If you do create these new courts and set over them gentlemen learned in the law, give them some jurisdiction to keep them employed. You magnify the importance of their courts, you give them dignity and respectability in that way; but if you say they shall only decide claims amounting to one hundred dollars, their jurisdiction is less than our justices of the peace in the country, for we have jurisdiction up to the amount of three hundred dollars, as they do in Ohio, by summoning a jury of six men to try the case, and generally we get nearer the facts and justice of the case than they do in courts where you have your fine spun theories of rules of evidence and all that. In these courts we only try how justice may not be done; but in other courts the smartest lawyers generally carry the thing in their own way contrary to justice. We go through just like a bull through a cane-brake, let these fine theories go, and settle it as seems to be right and justice seems to demand.

The CHAIRMAN. The question is on the first division of the amendment to the

amendment, to strike out "three hundred" and insert "one hundred."

The first division of the amendment to the amendment was agreed to, there being on a division, ayes forty-four; noes twenty.

The CHAIRMAN. The question is on the second division of the amendment to the amendment to strike out "thirty" in the twenty-second line, and insert "fifty," so as to make one member of this court for every fifty thousand inhabitants.

Mr. CUYLER. Fifty thousand would be too few. We have now seventy-two magistrates in this county. One to every fifty thousand people would give us only fourteen. They cannot do the duty. That is the simple fact about it. I might have some doubt as to whether the number ought not to be one for every twenty thousand, but it certainly ought not to be reduced below one for every thirty thousand.

The CHAIRMAN. The question is on this division of the amendment to the amendment.

The division was rejected.

The CHAIRMAN. The question recurs on the next division of the amendment to strike out all after the word "by," in the twenty-third line, to and including the word "district" in the twenty-fifth line, and inserting "citizens having the qualifications of justices of the peace."

Mr. CUYLER. I am not going to discuss that again, because I went thoroughly over the whole question last Friday. I consider learning in the law essential to the proper discharge of this duty, and I hope the Convention will stand by it as the committee have reported it. To strike that out is to take away nine-tenths of the whole value of the system as developed in the section.

The division was rejected, the ayes being sixteen; less than a majority of a quorum.

The CHAIRMAN. The question is on the next division striking out "seven" and inserting "five" before "years," as the term of office.

Mr. CUYLER. I do not see any advantage in this amendment. If they are to be judges learned in the law who will be required, of course, to give up their practice in order to discharge these duties, I can see many arguments in favor of lengthening the term beyond seven years, but none in favor of shortening it. I hope seven years will stand as reported.

Mr. MACCONNELL. I understand the amendment now proposed requires these judges, or whatever they may be called, in Philadelphia to be elected in the same manner as we were elected. I want to know if that gives the people of Pittsburgh a chance to vote on magistrates in Philadelphia?

The division was not agreed to.

The CHAIRMAN. The question is upon the next division, to insert, after the word "city," at the end of the next to the last sentence, the words, "in the manner in which the delegates at large from the State to this Convention were voted for."

Mr. DARLINGTON. Is that intended to introduce minority voting?

The CHAIRMAN. Limited voting.

Mr. DARLINGTON. Is it cumulative voting or limited voting?

The CHAIRMAN. Limited voting.

Mr. DARLINGTON. What is the extent of the limit?

The CHAIRMAN. There is no number named.

Mr. NILES. I simply desire to call the attention of the committee of the whole to the present shape of the amendment. It seems to me to very clumsily express the idea designed, and in order to find the true interpretation of the Constitution we should be compelled to go back to an old act of Assembly. We are asked to frame a Constitution based on an act of Assembly which will be obsolete when the new Constitution goes into effect.

Mr. BUCKALEW. Mr. Chairman: The gentleman from Philadelphia, (Mr. Bidle,) who is now absent on account of a death in his family, intended to put this particular branch of the amendment into form. In presenting it as he did in great haste, he designed only to suggest a principle which he desired to have incorporated into this portion of the Constitution. He had an amendment prepared which he happened to show me before he left, and in his absence I will do substantially what I understand he designed to do, and I offer the following as a substitute for this branch of the amendment:

The CHAIRMAN. That cannot be done at this time. An amendment to an amendment is pending.

Mr. BUCKALEW. The gentleman from Philadelphia desired himself to substitute this for his own amendment. I have the substitute as it was prepared by him.

The CHAIRMAN. If the delegate from Columbia, on behalf of the delegate from Philadelphia, proposes to modify the

amendment before the question is put, that can be done. The Chair did not understand the application of the delegate.

Mr. BUCKALEW. On behalf of the gentleman from Philadelphia I ask leave to modify his amendment, so as to insert after the word "city," at the end of the next to the last sentence, these words: "And in the election of the said judges no voter shall vote for more than two-thirds of the number of persons to be chosen."

At the first election after the adoption of this Constitution there will be twenty-two judges to be chosen in this city. Two-thirds of that I suppose will be fourteen, so that the relative numbers to be voted for would be fourteen and eight. This is the idea of the gentleman from Philadelphia, as he would express it if he were here, so that the magistrates would, under the new plan, be divided among the political parties as they are now under the existing plan. By having them elected at large from the whole city this idea would be retained as it now exists, under the system of single districts. I beg leave to say that this amendment does not, as I understand it, involve the general question of reformed voting. It is simply an application of the principle on which the members of this Convention were elected, to the election of magistrates in this city.

On the question of agreeing to this division of the amendment, a division was called for, which resulted thirty-seven in the affirmative, and twenty-nine in the negative. So the division was agreed to.

The CHAIRMAN. The question now recurs upon the amendment offered by the delegate from Lycoming as amended. The paragraph as amended will be read.

The CLERK read as follows:

"In each city having a population exceeding 200,000 there shall be established, in lieu of the office of alderman and justice of the peace as the same now exists, one court (not of record) of police and small causes not exceeding \$100, for each 30,000 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, and in the election of the said judges no voter shall vote for more than two-thirds of the number of persons to be

chosen. They shall be compensated only by fixed salaries to be paid by said city, and shall exercise such jurisdiction, civil and criminal, as is now exercised by aldermen and justices of the peace, and such other jurisdiction as may be from time to time prescribed by law."

Mr. ARMSTRONG. I propose to amend the word "small" in the first sentence, simply a verbal modification. The word "small" seems to be unnecessary, and I move to amend, by striking it out and inserting the word "civil." The clause will then read, "one court (not of record) of police and civil causes."

The amendment to the amendment was agreed to.

Mr. TEMPLE. I offer the following amendment as a substitute for the section as amended:

"In cities having a population exceeding two hundred thousand there shall be one alderman for every fifteen thousand inhabitants therein. Districts of as nearly equal population as may be, and formed of compact and contiguous territory, shall be established by law in each of which districts but one alderman shall be elected, reside and hold office. Said aldermen shall have and exercise jurisdiction and powers as heretofore, except as the same may be hereafter modified, altered, or enlarged by law; and shall receive for their services a fixed compensation, which shall not be diminished during their term of office, and which shall be determined and paid by the city in which such aldermen hold office; and shall receive no other emolument or fees whatsoever.

"Their term of office shall be five years.

"The term of aldermen now in office shall not be hereby affected."

Mr. CUYLER. I earnestly hope that the Convention will not stultify itself after the thorough discussion that this question has had and after the vote just taken, by adopting any such substitute.

Mr. TEMPLE. I cannot see how the committee of the whole will stultify itself by adopting this substitute. I do not know that the committee has committed itself in any manner by the votes cast upon the various amendments which have been acted upon. It may be they have, and it may be that they have not.

The substitute proposed by Mr. Temple was rejected.

Mr. D. N. WHITE. I move to amend further by striking out the words "two hundred thousand" in the first sentence,

and inserting the words "four hundred thousand."

The CHAIRMAN. That is not an amendment to the amendment, and not germane to the amendment pending before the committee of the whole.

Mr. D. N. WHITE. If the pending amendment carries, will it carry the section?

The CHAIRMAN. Not at all.

Mr. CAMPBELL. I desire, if it is in order, to offer a substitute for the section.

The CHAIRMAN. It will be in order, if it modifies the amendment pending, or involves the principle contained in the amendment pending.

Mr. CAMPBELL. I desire to offer a substitute which will be found on page thirty-two of the suggestions of amendment.

The CHAIRMAN. The proposed amendment will be read.

Mr. ARMSTRONG. I inquire whether it is a substitute for the entire section?

Mr. CAMPBELL. For the amendment as well as the section.

The CHAIRMAN. It is not in order unless it affects the principle of the amendment before the committee.

Mr. CAMPBELL. It does affect the principle of the amendment.

Mr. ARMSTRONG. I raise the point of order that if it be a substitute for the entire section, it cannot be voted upon until the section is perfected. This is not the time to offer it. I would suggest that the section be amended, and when the section is ready to come to a vote, then a substitute will be in order.

Mr. CAMPBELL. Well, in order to accommodate the gentlemen, I withdraw it for the present.

Mr. CASSIDY. I rise to inquire the exact condition of the matter before the House.

The CHAIRMAN. The chair will inform the delegate and the committee that the exact question before the committee is the amendment of the delegate from Lycoming (Mr. Armstrong) as modified by the amendment offered by the delegate from Philadelphia (Mr. Biddle) as modified by the delegate from Columbia (Mr. Buckalew.) That is the question before the Committee.

Mr. CASSIDY. Let us understand exactly what that is. By this time we have forgotten all about it. [Laughter.]

The CHAIRMAN. The amendment of the delegate from Lycoming, as modified by the amendment of the delegate from

Philadelphia and the delegate from Columbia, will be read.

The CLERK. The amendment of the delegate from Lycoming was to insert after the word "causes" the words "not exceeding \$300." That was changed to \$100. After the word "city" in line twenty-seven, the words "and in the election of the said judges, no voter shall vote for more than two-thirds of the persons to be chosen," have been inserted.

Mr. CASSIDY. That we have agreed to.

The CHAIRMAN. That has been added to the amendment offered by the delegate from Lycoming; and the question now is on the amendment offered by the delegate from Lycoming, as thus amended.

Mr. MACCONNELL. Do we understand the question to be now on the paragraph reported by the committee as amended by those amendments which we have voted on?

The CHAIRMAN. The Chair will again inform the delegate and the committee that the question before the committee was the paragraph of the fourteenth section, commencing at the nineteenth line and ending at the thirtieth. The delegate from Lycoming moved to amend. That amendment was proposed to be amended by the delegate from Philadelphia, and two divisions of his amendment were adopted. The amendment of the delegate from Lycoming as thus amended is the question before the committee.

Mr. CASSIDY. Our difficulty arises from not remembering the latter portion of the motion of the gentleman from Lycoming as it was originally.

The CHAIRMAN. It had no latter portion.

Mr. CASSIDY. We have passed on the question of jurisdiction first, and secondly on the manner of electing. Now is there any other portion of the amendment of the delegate from Lycoming that has not been acted on?

The CHAIRMAN. No other portion. The question is on the amendment as thus amended.

Mr. BEEBE. I ask for the reading of the amendment.

The CHAIRMAN. The paragraph as proposed to be amended will be read.

The CLERK read as follows:

"In each city having a population exceeding two hundred thousand, there shall be established, in lieu of the office of alderman and justice of the peace as the same now exists, one court (not of

record) of police and civil causes not exceeding \$100, 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; and in the election of the said judges no voter shall vote for more than two-thirds of the number of persons to be elected. They shall be compensated only by fixed salaries to be paid by said city and they shall exercise such jurisdiction, civil and criminal, as is now exercised by aldermen and justices of the peace and such other jurisdiction as may be from time to time prescribed by law."

Mr. CAMPBELL. If this amendment is voted upon and adopted it will probably secure the adoption of the section as then amended; and in order to prevent that, if possible, I would like to read the plan I propose to offer, so that if delegates think it better than the other, they may first vote down the amendment and then the section. I shall read it as part of my remarks. (It is found on page thirty-two of the amendments presented in Convention:)

"In the city of Philadelphia, in lieu of the present aldermanic system, there shall be holden justices' courts.

"The justices of said courts shall be at least thirty years of age and not over sixty-five, and shall be regularly admitted practising attorneys of some court of record in said city for at least five years previous to their election.

"The said city shall be divided by the Legislature every ten years into districts containing at least forty-five thousand inhabitants, according to the next preceding federal census, in each of which districts there shall be elected three justices.

"Said districts shall be of equal population as near as may be, and in their formation the wards composing each district shall be contiguous to each other, and not more than one ward shall be divided in any two districts.

"Said justices shall all be elected upon the same day throughout the city, except in cases of vacancies, which shall be filled by special elections for the unexpired terms.

"In voting for said justices each voter may cast as many votes for one candidate

as there are justices to be elected in the district, or may distribute the same or equal parts thereof among the candidates as he may deem fit; and the three candidates highest in votes shall be declared elected.

"Said justices shall be paid uniform stated salaries, which shall not be increased or diminished during their term of office.

"The salaries of said justices shall be the only compensation allowed them, and all costs and fees which shall be received by them shall be paid over monthly to the city treasurer.

"Proceedings in said justices' courts shall be oral, and no written pleadings shall be used or allowed.

"The jurisdiction of the justices' courts shall extend to all matters or causes now cognizable by the aldermen of said city, but the limit of their jurisdiction in civil causes shall be extended from the sum of ninety-nine dollars and ninety-nine cents to two hundred and fifty dollars; and in criminal causes to misdemeanors where the imprisonment is not for a longer time than one month nor where the fine imposed is not greater than one hundred dollars. *Provided*, That the judgments of said courts in civil causes where the amount involved is not greater than twenty-five dollars, shall be final.

"Juries of a less number than twelve may be empannelled for the trial of causes in said courts, when such trial is demanded by any defendant or person accused of committing a misdemeanor. *Provided*, That two-thirds of any jury may render a verdict, which shall be as conclusive as if rendered by the whole number."

Now, Mr. Chairman, the amendment of the gentleman from Lycoming, as modified, provides for the election of police justices throughout the city on a general ticket. It fails to provide for districting the city. The difficulty will then occur of determining, if there are, say twenty, thirty or forty justices elected on general ticket throughout the city, where those justices shall hold their courts? How shall they hold their courts? How many of them shall sit together? Shall they all have their offices down town in one place—in the business part of the city, or shall they be distributed over the city in the manner that the present aldermen are? If we leave the details out of the Constitution, the subject is then necessarily remitted to the Legislature, and the Legislature will then have to district the

city, without any rule to guide them. In the absence of any such rule, they may be distributed in different parts of the city according to political favoritism. The simple provision of the amendment is that they shall be elected on a general ticket. No rule is provided for the holding of their sessions.

The proposition which I have read provides that the city shall be divided according to a regular rule into districts of forty-five thousand inhabitants. That will remove the present evil resulting from the single district system. Where we have small wards selecting aldermen, necessarily corrupt men may get into those positions. While doing away with the evils of the single district system, this proposition does not fall into the other evil of having so many elected on one general ticket, that the voters are not able to discriminate in their selection. The consequence will be that where they have such a large number to select from, the same corrupt men that now are elected aldermen will very probably be again chosen. We find from our political experience that where there is a large number to be chosen on general ticket, the different candidates trade off with each other, and, as a consequence, bad men are nominated just as well as good men, and the same evil now complained of will result. But if we had the city divided into districts of convenient size for the choice of justices, and at the same time not so small that the petty, local ward influence could operate, we would have a rational plan by which we could secure the class of men that the people want.

I have taken the trouble to go over the city wards according to their population, and I find that the ratio of forty-five thousand is a good one; that the wards can be divided in that way. The provision that only one ward shall be divided in any two districts will prevent the Legislature from gerrymandering the city, and the ratio of forty-five thousand will make the districts large enough to afford opportunities for the people to select good men, without being subject to the influences which necessarily result from having very small districts. Then having three justices in a district, and having a minority judge sitting with the other two, you have a check upon the majority operating all the time and preventing the extortions, the political favoritism and other evils that the people of the city now suffer from.

In addition to having three justices sitting in a district, I propose to increase their jurisdiction in civil causes to the sum of two hundred and fifty dollars, and have all the pleadings and proceedings, except the mere docket entries and record, by word of mouth, so that there will be no necessity for the people, if they do not wish to do so, to employ lawyers. We should provide, for the people, if possible, a cheap and expeditious mode of obtaining justice. By having all the proceedings by word of mouth, having no written pleadings allowed at all, having nothing written except the mere docket entries and the record of causes, kept by the justices themselves, we make these proposed courts what they should be, cheap and expeditious courts of justice.

By increasing their jurisdiction also in petty cases of misdemeanors and in civil causes to a larger amount than aldermen now possess, the courts are placed in a more important light before the bar and the people; much more importance is attached to the judges holding them, and as a consequence it will be found that the proper class of lawyers will seek the positions that it is proposed to create. If you merely provide that lawyers shall be appointed police judges in lieu of the present aldermen, and that their jurisdiction shall not extend to causes involving the sum of \$100 or upwards, you will have what a great many gentlemen apprehend, mere pettifoggers—fourth and fifth rate lawyers seeking these positions, and such a class will be really worse than the men who now disgrace the position of alderman. But by making the courts more important, having fewer of them, say fifteen courts in the city with three judges in each, and having the judges elected on some non-political principle, so that all parties of the people could be represented. I think you will have a system that would give satisfaction to the people, and you would get the right class of men as judges. Then give those judges good salaries and provide clearly and distinctly that their salaries shall be their only compensation, that they shall not be permitted to take any fees for their own use, and you will get a set of justices that will bear honor to your local courts. You will also get rid of the objection that a great many gentlemen have to mere police courts with but one judge, who, after sitting a few years and becoming familiar with the routine of criminal business, degenerates very often into a corrupt and venal person, that citi-



zens find it necessary sometimes to impeach for misbehavior in office. I trust, Mr. Chairman, that the amendment of the gentleman from Lycoming (Mr. Armstrong) will be voted down, so that I can offer in lieu of it the section which I have read.

Mr. MINOR. Mr. Chairman: I find myself unable to support the proposition as it now stands. Although it is a matter that pertains to the city of Philadelphia, yet other members must vote upon it. I feel disposed to yield could I even see that it was a reasonable arrangement; but it occurs that of all the propositions which have been made to relieve the difficulties which have been presented to us, this is the worst.

Let me give one or two reasons. As now presented, it is simply a system for providing justices of the peace for Philadelphia. How does it provide for them? It provides, in the first place, that they must be persons learned in the law, with a practice in the court of common pleas of not less than five years; and in the next place, that those persons thus learned in the law, thus presumed to be honorable and able, shall have a jurisdiction which shall not exceed the sum of one hundred dollars. Now, sir, put those two things together, and see where it will land you. Will it be true that any man of decent practice, I had almost said any man of decent capacity, after having practiced five years in the common pleas courts, will consent to sit as a judge of a court whose extreme jurisdiction is the sum of one hundred dollars? Why, sir, in nearly all the counties of the State the jurisdiction of justices is now three hundred dollars. A justice of the peace in Philadelphia then, after he has had five years practice and is learned in the law, is capable of being trusted with about one-third the extent of business that a man in the country is, who is not a lawyer at all.

Now, sir, let us look at this soberly and seriously and see where it stands. Is not this a system that will inevitably result in placing in these offices men who are unfit to be either lawyers or justices? I will not enlarge upon that proposition, because it seems so plain upon its face that the amount fixed as the limit of jurisdiction necessarily brings down the qualification of the persons who will take the place to those who will simply dishonor it, and will be a nuisance in the communities where they undertake to administer justice. That is the first ob-

jection that I have to this measure, and if the section is adopted it cannot be changed because it is in the Constitution.

The next objection is, that these judges are to be voted for on the cumulative or limited system. I will not enter into the merits or demerits of the limited system of voting as a general rule; but I simply refer to it in this connection added to the others. When they are voted for upon this limited system, each voter voting for two-thirds, it makes it perfectly certain that some bad men will be elected and that beyond the power forever of all the good men of Philadelphia to prevent it. It is saying to the wicked and corrupt, "we have here placed in your hands the means of electing at least a good share of these officers, men of your own stamp, and nobody can prevent you; by concentrating your votes upon a certain number, you can elect them in spite of all the virtue, goodness and intelligence that exists in this great city of Philadelphia. So that, added to the other consideration of the kind of men who will consent to accept these offices, you make it certain that some men of bad character shall occupy these positions, and no one can prevent it. This leads to the next objection. Suppose that by degrees, one after another, they get this sort of men into office here, and the whole city is crying out about it, what can you do? It is in the Constitution, fastened upon you, and you cannot change it. I need not enlarge upon that; but I refer to it independent of the general question, independent of the merits of the cumulative system of voting. It will necessarily result in that way here in the city.

Then there is another objection. I have felt disposed to yield to Philadelphia, and did so upon the question of the appointment of prothonotaries. There seemed to be some merit in that, and the delegates from the city were agreed; but on this question the gentlemen from Philadelphia are not agreed, and hence we are at liberty to have our opinion, and vote as we think we ought to vote on this subject. They themselves who live in the midst of the evil here, stand up, some of them, and say, "this is what we want;" others, and gentlemen of talent and respectability, say, "it is not what we want." Until they can substantially agree among themselves, I cannot favor either branch that is now proposed to us.

But, sir, let us go a little further. We claim that there is not a single thing of

virtue in this section that is not amply provided for, and in a much better manner, already in the sections which we have adopted. We have adopted a section which gives the right to the Legislature to establish districts for the election of justices. Those districts may be large or they may be small; they may embrace the entire city or they may embrace any fraction of it; so that you can have your election by general ticket by means of general legislation, without this section if found desirable.

Then, again, the Legislature can establish other courts, if they should become necessary; but here you tie them up to one system, which cannot be changed until there is a new Constitution, no matter how unfortunate it may prove.

One other remark, sir, and I will close. There is just one reply made to all these objections. It is said that we cannot rely upon the Legislature; we cannot rely upon anything except this Convention, and that must give us this section; and why? It is said that if all the good people of Philadelphia come out and vote, yet it will do no good because their votes will not be counted, and hence they cannot elect good men to the Legislature, they cannot elect good aldermen, they cannot elect other good men. If that is true, I should like to know how it is that with the same election districts, with precisely the same election officers, you are going to be able to elect good men as justices of the peace and get your votes counted, when you cannot elect good men and get your votes counted to any other office. There is the proposition. Hence I do not see that any valid answer to us has been given. If it is true, it is true as to all offices and as to all persons; and this is in addition to the other considerations which I have already mentioned.

These then, sir, are, in brief, the reasons why I cannot vote for this section. I regard it as evil in itself, insufficient for the purpose, and believe that a general remedy fully sufficient has already been provided in another form.

Mr. J. W. F. WHITE. I do not rise, sir, to discuss this section, but merely to indicate very briefly why I shall be compelled to vote against it.

In the first place, the wording of this section now applies solely to Philadelphia, but in all probability, in less than a year, it may also apply to the city of Pittsburg. As a delegate from that city, I cannot approve of the plan proposed here for those

police judges; and if no other delegate shall move to do so, I shall move to strike out the first line of the paragraph and insert "the city of Philadelphia," so as to confine it exclusively to the city of Philadelphia.

I have listened very attentively to the arguments offered by the gentleman from the city in support of this measure, with a desire on my part, if I could consistently, to vote for it; but I find myself, as a member of this Convention, called upon to discharge my duty on every question and to vote upon every question as it comes up according to the dictates of my own judgment. I am willing to go as far as I consistently can to accommodate the gentlemen from the city of Philadelphia; but after hearing their arguments, my own judgment is decidedly against the plan they propose here. I firmly believe that it will result in the end in more dissatisfaction and more trouble and difficulty than the aldermanic system.

The Legislature has power under the sections we have already adopted to establish this system if the people of Philadelphia desire it. If they should establish it, and after the experience of a few years it should be found not to be beneficial, the Legislature could abolish it or modify it, and change it as circumstances might prove to be necessary and wise; but if we insert it in the Constitution, it becomes irrevocable until the Constitution be changed. I am willing, if the sections already adopted do not give the Legislature full power to change and modify it to suit the views of the gentlemen from Philadelphia, to vote for any amendment which will clothe them with full power on the subject.

But, Mr. Chairman, I cannot vote for this special legislation in the Constitution. We have by a constitutional provision declared that the Legislature shall pass no special laws in reference to cities; we have debarred the Legislature from legislating specially for any city in the Commonwealth; and now, in the face of that constitutional prohibition, we are called upon to insert a clause in the Constitution specially for one city in the State. I think it to be unwise and impolitic, and, with great reluctance, I shall be compelled to vote against the whole section.

The CHAIRMAN. Is the committee ready for the question?

Mr. CUYLER. Let the specific amendment be read. It may not be necessary to read it if the amendment is the motion of the gentleman from Lycoming (Mr. Armstrong) as amended by the gentleman from Philadelphia (Mr. Biddle.)

The CHAIRMAN. That is the question.

Mr. CUYLER. Then I do not desire to hear it read.

The Chairman put the question, and declared that the noes appeared to prevail.

Mr. ARMSTRONG. I hope there will be no misapprehension on this matter. Are we voting on the amendments only, or upon the section?

The CHAIRMAN. Upon the amendment only.

Mr. ARMSTRONG. Then the vote "aye" now would insert in the section the amendments which have already been adopted by formal vote. It is virtually the main question, although technically the vote is upon the amendment.

Mr. J. R. READ. As there seems to be some misconception as to what we are voting upon, I should like to have the amendment read.

The CHAIRMAN. The Chair will state that the question before the committee is the amendment of the delegate from Lycoming, modified from three hundred to one hundred dollars, with the addition proposed by the delegate from Columbia as the manner of election by the limited vote. That is the amendment before the committee.

Mr. CUYLER. Let the Clerk read it.

Mr. ARMSTRONG. Let him read the paragraph as it will stand when amended.

The CHAIRMAN. The paragraph will be read as it will stand if amended.

The CLERK read as follows:

"In each city having a population exceeding two hundred thousand, there shall be established, in lieu of the office of alderman and justice of the peace as the same now exists, one court (not of record) of police and civil causes not exceeding one hundred dollars, 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; and in the election of the said judges no voter shall

vote for more than two-thirds of the number of persons to be chosen. They shall be compensated only by fixed salaries, to be paid by said city, and shall exercise such jurisdiction, civil and criminal, as is now exercised by aldermen and justices of the peace, and such other jurisdiction as may be from time to time prescribed by law."

Mr. ARMSTRONG. The section has been read with the amendments in. I think it simplifies the question to say that we have already voted on the amendments and they have been adopted—all that have been read—and the vote now is merely technical; and when we vote "aye," we simply adopt the amendments which have already been adopted as amendments to the amendment.

Mr. CASSIDY. I wish to call the attention of the chairman of the committee to the fact that in the beginning of this paragraph he has these courts called courts "of police and civil causes not exceeding one hundred dollars;" and yet towards the end of the paragraph he says that they shall have such jurisdiction as the aldermen now have, both civil and criminal.

Mr. CUYLER. It should be "except as herein modified."

Mr. CASSIDY. Strike out "police and civil causes," and then the language below will be exactly right, because we have said the civil jurisdiction shall not exceed "one hundred dollars."

Mr. CUYLER. I suggest to insert after "criminal" in the twenty-eighth line the words, "except as herein modified," which will make it exactly correct. I move to insert after the word "criminal" in the twenty-eighth line the words, "except as herein modified."

Mr. CASSIDY. I also want to call the attention of the chairman to the words following the word "and" in the twenty-ninth line, "such other jurisdiction as may be from time to time prescribed by law." I take it the committee do not desire the Legislature to confer additional jurisdiction upon these courts beyond \$100. That is exactly what you are providing for, however; and they may have the very jurisdiction that all of us desire to avoid.

Mr. CUYLER. I have no objection, after disposing of this amendment, to strike out those words. I move now to insert after the word "criminal," and to insert "except as herein provided."

The CHAIRMAN. The question is on the amendment of the delegate from Philadelphia.

The amendment was agreed to.

The CHAIRMAN. The question now is on the amendment as amended.

Mr. CUYLER. I move now to strike out the words, "and such other jurisdiction as may be from time to time prescribed by law," in the twenty-ninth and thirtieth lines.

The CHAIRMAN. That is not an amendment to the amendment. The question is on the amendment of the delegate from Lycoming as amended.

The amendment as amended was agreed to; there being, on a division: Ayes, forty-five; noes, twenty-three.

Mr. D. N. WHITE. I move that the word "two" in the first line be changed to "four."

Mr. J. W. F. WHITE. I would suggest to the gentleman from Allegheny to just say "the city of Philadelphia." That is the meaning of it.

Mr. D. N. WHITE. That is the idea I have in view.

The CHAIRMAN. The question is on the amendment proposed by the delegate from Allegheny.

Mr. J. W. F. WHITE. I move to amend, by striking out the first line and inserting "in the city of Philadelphia," and I will just make this remark upon that: This is a Constitution to apply for all time to come, and there may be other cities in the State that may have four hundred thousand inhabitants, and I do not see why they should be involved in this. If we intend Philadelphia, why not say so?

Mr. D. N. WHITE. I accept the modification.

The CHAIRMAN. The amendment now is to strike out the first line of the paragraph and insert "in the city of Philadelphia."

The amendment was agreed to; there being on a division, ayes forty-five, noes sixteen.

Mr. CUYLER. I move now to strike out in lines twenty-nine and thirty, the words "and such other jurisdiction as may be from time to time prescribed by law."

The CHAIRMAN. The question is on the amendment of the delegate from Philadelphia.

The amendment was agreed to.

Mr. CAMPBELL. I now offer my substitute for the section and ask that it be read. It will be found on page 32 of the amendments.

Mr. CASSIDY. Will my colleague allow me to suggest that there are several matters to perfect this section, which we de-

sire to have acted on, and if he will withdraw the substitute so as to allow the section to be perfected, he can make his motion at any time. There are several amendments to be proposed in matters of form, and some of them matters of substance.

Mr. CAMPBELL. This is a substitute for the entire section. At the suggestion of the gentleman, I withdraw my amendment until the section is perfected.

Mr. BIGLER. The right to perfect the original matter will remain, although the gentleman offers his substitute.

The CHAIRMAN. The delegate from Philadelphia (Mr. Campbell) has withdrawn his substitute. The question is on the paragraph as amended.

Mr. BUCKALEW. As this paragraph has been amended to name Philadelphia alone, I offer the following amendment to come in at the end:

"The provisions of this section may be extended by general law to cities containing more than fifty thousand inhabitants."

As I understand the construction of this article, the Legislature cannot extend the system proposed for Philadelphia to any other city, and therefore I offer this amendment to raise the question fairly for the decision of the Convention, caring nothing about it myself. It will permit the Legislature, if this system of local justice should work well, to extend it to cities of large population now existing or that may hereafter spring up in other parts of the State. It appears to me, sir, that this power is not one that will be likely to be abused; it is not one likely to be perverted if reposed in the Legislature. There will always be a powerful influence in favor of any existing aldermanic system in any city. A good deal of local influence will always exist in favor of retaining it, although it may not be a good one. I take it for granted, then, that the Legislature will pass no law changing the aldermanic system of any city, unless it be a clear case and unless public opinion generally shall sanction the change.

You will observe, sir, that I have drawn my amendment so that the Legislature will not be allowed to pick out a particular city, and discriminate between cities of the same class. There can be no special legislation under this amendment. The extension of this plan to other cities besides Philadelphia must be by general law of universal application. And then,

sir, my amendment excludes all cities of less than fifty thousand inhabitants. If the number is supposed to be insufficient, I have no objection to altering it. I offer it as an amendment now, because its adoption will be necessary in order to give the Legislature power over this subject and to permit them to adapt our future system of local judicature to the changing conditions of society and to the possible growth of our State. I think in that form it will not be liable to abuse.

Mr. EWING. I trust that the amendment will not prevail. As we have passed the first paragraph of this section, the Legislature will have power to district cities of any particular size, so as to have a smaller number of aldermen. The adoption of this amendment would rather indicate that they had not that power, and they certainly have under the section as we have adopted it already.

In addition, I think the paragraph as it now stands is an exceedingly objectionable one, about as bad a system as could well be devised. The Legislature have power, certainly, under the first part of the section, as we have adopted it, to make alterations in the aldermanic system for any city or district.

Mr. KNIGHT. Mr. Chairman: If I understand this section aright, it reads:

"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."

There seems to have been a general denunciation against the aldermen of the city of Philadelphia. The places of some of them might perhaps be filled with better men; but if this section is passed, as I understand it, it would exclude any of the aldermen now holding their positions, however competent, from being re-elected, unless they happened to be lawyers having had five years practice. I think that would be unfortunate and unjust; and so believing, I shall not vote in favor of the section on the ground named.

Mr. HANNA. I think the section as now amended presents a very interesting spectacle to the people of Philadelphia and of the Commonwealth. We propose to put in the Constitution an article applicable alone to the city of Philadelphia. Suppose this system of local courts should turn out to be unpopular, what are we to do? We must pass a resolution through the Legislature amending the Constitution, and

then submit it to the people of the whole Commonwealth, to adopt an amendment to the Constitution, relative to the city of Philadelphia alone. Was anything so ridiculous ever proposed to the people of this Commonwealth? I submit that this course will render us ridiculous before the people, not only of this city, and of the Commonwealth, but of the whole United States, and I hope, as one citizen of Philadelphia, that you will not place the Convention in that position, but will vote the section down.

The CHAIRMAN. The Chair will remind gentlemen that the question is on the amendment proposed by the delegate from Columbia, not on the paragraph itself.

Mr. WALKER. Mr. Chairman: The delegates from the country have, as a general rule, kept silent during the pendency of this section before the committee of the whole. They have felt, or I for one have felt at all events, disposed to allow the delegates from the city of Philadelphia to please themselves. That it appears they cannot do. The effort is now made by the amendment proposed by the delegate from Columbia to extend this mongrel section to the entire State. I represent a small city, and, as the representative of that city, I enter my protest against the power being vested in the Legislature, at any time, to extend so imperfect and so improper a section as this to the city of Erie. I have never yet voted for the limited or the cumulative principle of voting and I never mean to; and if this section retains it, on that ground it shall receive my negative vote. I believe in the people speaking for themselves, each man for himself, and that you shall not say that in the city of Erie there shall be an officer elected throughout the city that I or any man dare not vote for. That is just what you have here; and not only that, you permit the formation of cliques, of clubs, of associations of drunkards if you please, of foreigners if you please, of Catholics to a certainty. You allow them to form cliques and elect one man, two men, or more to sit upon your bench.

I will never agree to that. You will allow in the city of Philadelphia by this section, as it stands, the colored people to elect a colored judge. Well, if that is the case, I am sure I ought not to object to it, but I should like to see the delegate from the city of Philadelphia before me (Mr. Cuyler) addressing a colored judge.

Mr. CUYLER. I have not the slightest objection to it, I am sure. The delegate from Erie need have no delicacy on my account.

Mr. WALKER. I do not wish this principle applied to the city of Erie and I do not want the Legislature to ever have the power to do so. For that reason I shall vote against this amendment, and I trust the gentleman from Columbia will also. If not, and it is adopted, then I will vote against his section to a certainty.

Mr. TEMPLE. Mr. Chairman: There is only one thought that I desire to express. I trust the members of the committee of the whole will not be carried away by either what has been said by the distinguished delegate from Columbia of the difficulty of receiving proper redress from the Legislature, or what has been said so ably by the distinguished delegate from Philadelphia (Mr. Cuyler.)

I beg gentlemen to remember that we have not always proposed to abolish offices that have been adjudged corrupt, and consistency should require that we do not now abolish the office of alderman and justice of the peace. When the legislative article was under discussion the character of the Legislature was dissected as keenly as to-day the character of the aldermen of this city have been.

Everything that has been here said, or that can possibly be said in reference to the office of alderman or justice of the peace, was then said and applied to the members of the Legislature. It was said upon this floor, that there was no possibility of having a fair election, that members elected to the House of Representatives were men of venal character and unworthy of the confidence of the people. Yet there was no thought of abolishing the Legislature and establishing a House of Lords or a House of Commons or anything of that sort. The political degradation of this city was well ventilated, but it was never suggested that because of this wickedness of the people of the city of Philadelphia that therefore we should abolish the office of select councilman or common councilman. But because we are here on the judiciary article, and because it has been suggested by very distinguished gentlemen from the city of Philadelphia that there are great crimes and misdemeanors committed by certain aldermen of this city, it is claimed that we should altogether abolish the office of alderman and take away an indefeasible right belonging only to the people, and which we should leave

with them. The office of alderman is indispensable, and is brought directly home to the people for the transaction of a class of business that aldermen, whether learned in the law or not, can perform.

I simply desire to state, as I said before, that I trust the committee of the whole will not allow the eloquence and the high character of the gentlemen who are advocating this section in its present shape, and as it is proposed now further to amend it, to run away with their judgment; and I cordially agree with what has been suggested by my friend and colleague (Mr. Hanna) that if this plan now proposed be carried into effect, the people of this city, who do not want it, will be heartily sick of it in less than five years.

The amendment of Mr. Buckalew was rejected.

The CHAIRMAN. The question recurs on the paragraph as amended.

Mr. CASSIDY. Mr. Chairman: I rise to suggest the propriety of giving these magistrates jurisdiction in criminal matters of some final character. If the vote by which the amount involved in cases submitted to their judgment was limited to \$100, was to be taken over again, I would be in favor of increasing the jurisdiction to \$300, now that the committee of the whole has determined to keep in the qualification of "learned in the law." If these courts are to be composed of persons learned in the law, then I, for one, am in favor of giving them jurisdiction beyond the mere jurisdiction of justices of the peace, \$100. I therefore move now, meaning hereafter to endeavor to get back to the \$300 limit, that these courts shall have final jurisdiction in all misdemeanors where the penalty shall not exceed imprisonment for thirty days or a fine of \$100. It seems to me that if you are to have courts composed of judges learned in the law, we ought to be willing to trust them with some jurisdiction, in some degree similar to the jurisdiction conferred upon the other courts, and in that way allow them to relieve the other courts of some of their labors. The same authority, I believe is exercised in other portions of the State by justices, and very wisely, and I know it is exercised in neighboring States with great advantage to the people and the judiciary.

I therefore move to insert after the word "such" in the last sentence, the words: "and they shall have final jurisdiction in criminal matters, in all mis-

demeanors where the imprisonment is limited to thirty days or the fine to \$100."

Mr. BARTHOLOMEW. Will the gentleman from Philadelphia allow himself to be interrogated?

Mr. CASSIDY. Certainly.

Mr. BARTHOLOMEW. Do you mean that you would allow police magistrates to have final jurisdiction over misdemeanors without the intervention of a jury?

Mr. CASSIDY. Yes, I would—not of all misdemeanors, but certain of them. I would allow the decision of the judge to be final.

Mr. BARTHOLOMEW. Would not such a proceeding be a violation of the constitutional provision which gives every man the right to trial by jury?

Mr. CASSIDY. There may be cases where a man would not desire trial, as a vagrant for instance.

Mr. BARTHOLOMEW. A misdemeanor is an offence against the State, and hence we might have the right to set the right of trial by jury aside.

Mr. CASSIDY. Suppose some petty case of assault and battery?

Mr. HAZZARD. In criminal cases will it not be unconstitutional to give summary jurisdiction without the intervention of a jury?

Mr. CASSIDY. We are now framing the Constitution.

Mr. HAZZARD. Yes; but the Constitution we are now framing out to be constitutional, [laughter,] agreeing in all its parts, and one part says the trial by jury shall remain as heretofore. In some parts of the State a jury of six is used.

Mr. CASSIDY. I have no doubt that in many places it would be very wise to authorize the calling of a jury of six or seven persons. But there is a grade of crime, not perhaps properly characterized by the term "misdemeanor," that some of the justices ought to have the right to dispose of, by imprisonment in the house of correction for example. We are now erecting a house of correction, which will be finished before long, and it seems to me that persons who commit a certain grade of crimes ought to be sent there summarily by these justices.

I am not wedded to this particularly; but if you are to create courts of this character, presided over by persons learned in the law, it seems to me that you ought to give them some summary jurisdiction. I would limit them to misdemeanors where the law limits the penalty to imprisonment for not exceeding thirty days

or a fine of \$100, and this would relieve the other courts to some extent.

The CHAIRMAN. The amendment of the gentleman from Philadelphia (Mr. Cassidy) will be read.

The CLERK. The amendment is to strike out the word "such," in the last sentence, and insert the word "final," and after the next word, "jurisdiction," to insert the words "in all misdemeanors where the penalty shall not exceed imprisonment for thirty days or a fine of one hundred dollars."

Mr. J. R. READ. How will the sentence read as amended?

The CLERK read as follows:

"They shall be compensated only by fixed salaries to be paid by said city, and shall exercise final jurisdiction in all misdemeanors, where the penalty shall not exceed imprisonment for thirty days or a fine of one hundred dollars."

Mr. BARTHOLOMEW. I propose an amendment to the amendment.

The difficulty that I see in this scheme, so far as its practical operation in the cities is concerned, is this: Take the city of Philadelphia, with its eight hundred thousand people; it would have sixteen police judges learned in the law, and I suppose the received opinion, by the delegates in this Convention at least, would be that they should receive a remuneration that was commensurate with their position as attorneys-at-law and their learning and ability, and so forth. This of course would create a body of judges at a considerable expense. There is nothing restrictive in this section, as to the jurisdiction or the limitation of jurisdiction—I mean the territorial jurisdiction of any of these police judges. Now what would be the result? Suppose you have sixteen of these police judges salaried officers. I venture to say that in less than two years after this scheme goes into operation, perhaps four or five of these police judges would have to do all the work of the city of Philadelphia, and the positions of the others would be mere sinecures. Parties would naturally float into centres where a certain police judge would suit their purpose and their objects, either for his integrity or his ability, or for the reverse, and these particular centres would be the focus upon which all business would concentrate.

Therefore I take it that it would be but proper that the territorial jurisdiction, at least so far as criminal offences are concerned, should be defined and ascertained

upon the proposition that they should have jurisdiction only in criminal cases that arise within their district. I shall therefore offer that as an amendment to the amendment now pending, that the criminal jurisdiction of each judge shall be confined to the district for which or in which he was elected.

Mr. TEMPLE. They are elected all over the city.

Mr. BARTHOLOMEW. Then I withdraw the amendment. I did not understand that was the proposition. Is no particular police district defined in this section? ["No."] They are elected by the whole city?

Mr. CUYLER. By the whole city.

Mr. BARTHOLOMEW. You will have three or four justices who will do all the work then.

Mr. ARMSTRONG. If we had no Legislature, and the action of this Convention was to be final in all matters of detail, I think it would be very well worth while to consider both the proposition of the gentleman from Schuylkill and that of the gentleman from Philadelphia; but the purpose of this section is to establish an organization of local courts. We have limited their jurisdiction as to civil causes, but we have not limited their jurisdiction in any other respect, unless so far as calling them police courts, which term seems to have had a judicial determination. The Legislature will have entire control over this subject. Though the amendments suggested, proposing certain modifications and limitations, may be very important in themselves, they are not proper to be inserted in the Constitution, nor do they embrace by any means the entire scope of modifications and limitations which ought to be placed by the Legislature on the exercise of the power of these judges.

I think we go far enough when we establish the court and let the Legislature determine, according to the exigency of the time and the experience of the year, how they will limit, to what extent they will limit the jurisdiction, and change it as circumstances render necessary. I think it would be unwise to adopt either of the suggestions; but it is wise that the judges should be elected by the whole city, because it invites a better class of men as candidates. But when elected, it is entirely competent for the Legislature to determine the particular districts in which they shall exercise the jurisdiction. It is a mere matter of detail.

Mr. CASSIDY. Will the delegate give way for a moment?

Mr. ARMSTRONG. Certainly.

Mr. CASSIDY. If the committee will allow me, I will withdraw the amendment.

Mr. ARMSTRONG. Very well.

The CHAIRMAN. The amendment is withdrawn. The question recurs on the paragraph as amended.

Mr. BROOMALL. Mr. Chairman: I merely desire to remind the friends of this measure of a singular peculiarity in it in the shape in which it is now. At all the elections for police judges throughout all time to come, each voter will vote for only two-thirds of those voted for. Now it may happen that after a judge has been in office one year, he will die or resign, or remove from his district, and at the next election there will be but one judge voted for. If then each voter is to vote for only two-thirds of the number voted for, it will make a curious election return. The friends of the measure should avoid this in some way, if they can; but I am inclined to think we have got the paragraph about in the position in which it can be very safely voted down.

Mr. ALRICKS. Mr. Chairman: I offer the following substitute for the paragraph:

"In cities having a population of 200,000 inhabitants, aldermen shall be elected on general ticket by the qualified voters of said city, but no voters shall vote for more than two candidates. And the said aldermen shall have jurisdiction in civil cases not exceeding one hundred dollars. The said cities shall be divided by law into districts, and each district, containing not less than 30,000 inhabitants, shall be entitled to one alderman. They shall receive a stated salary, and shall pay all fees and fines collected by them into the city treasury. They shall hold their office for five years. They shall have criminal jurisdiction in the manner and to the extent now lawfully exercised by aldermen and justices of the peace."

I fear that we are likely to fall into a grave error here. We must look to the old law, the mischief, and the remedy. The mischief complained of was, that the class of men put into these offices were faithless, that they did not perform their duty with fidelity to the Commonwealth, and the remedy proposed is to change the name of the office, and instead of electing an officer to be called an alderman, to elect an officer who is to be judge of a police court. I apprehend that we gain nothing by the mere change of name. It



is altogether probable that when we take from the office the abuse by which the officer was corrupted, we shall remove the difficulty. If we give him a salary, instead of allowing him to receive fees and perquisites, we take away the inducement which he had for his corruption.

I would like to adhere as closely as possible to our organic law as we have found it and received it from our fathers. For centuries the office of alderman in certain sections of this country and in the old country has been held in esteem. I do not see why that office should not still be made honorable. If you give a salary to the officer you leave him without any inducement to be corrupt. I should be very sorry to give to aldermen power to send any person to prison without a hearing before a jury of the country. The truth is I never did approve of what are termed the police regulations that allow officers to commit to prison those who appear before them, without the opportunity of having a trial before a jury of their peers.

I think all that is necessary is that we should have an officer elected, because this Convention have decided that the judges of the courts are to be elected by the people and not selected as our jurors are for the trial of causes. Then affix to the office a fixed salary and require him to pay all the fines that he receives into your city treasury. Whether those fees are afterwards to go to the State or to the city is another matter.

Mr. CUYLER. Will the gentleman allow himself to be interrupted?

Mr. ALRICKS. Certainly.

Mr. CUYLER. I desire to ask him whether he is aware of the fact that the law now does make that requirement and that it is simply inoperative. The law requires that these fees, fines and penalties shall be paid over.

Mr. ALRICKS. But he gets no fixed salary.

Mr. CUYLER. But the law does require the payment of the fines and penalties into the city treasury; and it is not done.

Mr. ALRICKS. If you give him a fixed salary, I apprehend there will be a ready way of reaching him, if he does not pay over the fines he has collected and the fees he has received, because he is subject to indictment, and if you indict him and take him into the court he cannot escape from conviction if he has been guilty of a breach of trust.

I submit this as an amendment that in my opinion will meet the difficulty in our way in relation to abolishing the office of aldermen and electing police judges.

Mr. CUYLER. I ask to be indulged in but two minutes of remark in reference to this matter. The existence of the evil nobody can deny. There was read the other day, in the hearing of the Convention, by the gentleman from Lycoming, the chairman of the Judiciary Committee, the report of a body of our fellow-citizens fully informed on the subject, and a letter from a gentleman thoroughly intelligent upon it, in which the evil was stated in language so strong that I can employ no words that could add to its force.

Therefore the mischief must be believed to exist. No man can doubt it. And if it does exist, we are to find some remedy for it. Now what is that remedy? The gentleman from Dauphin proposes that which is in substance simply, the old system and nothing more. It is to continue the old system with all its existing evils, for the simple provision for the payment of a fixed salary amounts to but very little; although it is a step in the right direction it amounts to but very little toward a general redress for this great ill. Therefore I think his amendment, proposing nothing that differs substantially from the existing system, ought not to receive the favor of this committee.

The CHAIRMAN. The question is on the amendment of the delegate from Dauphin (Mr. Alricks.)

The amendment was rejected.

Mr. CAMPBELL. I now offer the substitute of which I gave notice a little while ago.

The CHAIRMAN. The delegate from Philadelphia moves to strike out the entire paragraph and insert what will be read.

Mr. CAMPBELL. It need not be read.

The CHAIRMAN. It has been read and will not be read again unless its reading is called for.

Mr. CAMPBELL. There seems to be a number of objections to the section as reported by the committee and modified by the several amendments adopted this morning. I offer this substitute in order to obviate some of the objections which have been urged. As I have already spoken as to some of its merits, I will not now take up the time of the committee, except to call their attention to two things.

The plan embodies in it an extension of the jurisdiction of the aldermen in civil causes to the sum of two hundred and fifty dollars, and in criminal causes to misdemeanors where the fine imposed is not greater than one hundred dollars nor the imprisonment longer than one month. In the amendment proposed by the gentleman from Philadelphia on my left (Mr. Cassidy) there was something of a similar character, but the plan I propose provides for something that his amendment did not, and that will meet the objection made to his amendment by the gentleman from Schuylkill (Mr. Bartholomew.) That feature is the part relating to juries of a less number than twelve persons, who may be empanelled for the trial of causes in the justices' courts proposed, "when such trial is demanded by any defendant or person accused of committing a misdemeanor, provided that two-thirds of any jury may render a verdict."

I will not detain the committee further on the matter, as it is getting late, but will merely submit it now for their consideration.

The CHAIRMAN. The question is on the amendment proposed by the delegate from Philadelphia (Mr. Campbell.)

The amendment was rejected.

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

Mr. M'CLEAN. I rise to propose a verbal amendment, to insert after the words "civil causes" the words "where the sum demanded is not above," as being more perspicuous, in lieu of the words "not exceeding."

The CHAIRMAN. That amendment is not in order. The Chair will remind the delegate from Adams (Mr. M'CLean) that his amendment proposes to strike out a part of what has already been inserted by the committee. The question is on the paragraph as amended.

The paragraph as amended was agreed to, there being on a division ayes forty-four, noes twenty-eight.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"All costs in criminal cases and taxes on the business of such courts, and all fines and penalties shall be discharged only by direct payment into the city treasury."

The paragraph was agreed to.

The CHAIRMAN. The next section will be read.

Mr. EWING. I offer a new section to come in at this place before section fifteen is read:

"In all cases of summary conviction or of judgment in suit for a penalty before a magistrate or court not of record, either party shall have the right to appeal to such court of record as may be prescribed by law."

If I can get the attention of the House for a few minutes, so as to secure the understanding of what I mean, I think it will meet the approval of every person who has given the subject any consideration.

We have heard a great deal the past two or three days in regard to the oppression and corruption of petty magistrates and committing magistrates in cities and towns. Now I do not believe that any system can be proposed which will entirely prevent wrong and oppression and injustice. It is inherent in the infirmities of human nature and the class of persons and the business that committing magistrates have to deal with; and in cities especially, I am well aware that the personal liberty that can be enjoyed in more sparsely settled regions must to some extent yield to the general security and peace. We have in the cities a very large jurisdiction vested in justices, aldermen and mayors in several classes of cases. For instance, I will give an example of each class. The offence of "*disorderly conduct*" is something that is unknown to the common law, and I suppose unknown except in the cities and boroughs of the State. Mayors and aldermen and justices of the peace are, through acts of Assembly and ordinances of councils, given summary jurisdiction to convict, fine and imprison for what they call "*disorderly conduct*." What that is, what acts and offences will constitute disorderly conduct, vary as the stupidity or the dishonesty, the venality or corruption of the magistrate or the malice of the prosecutor may determine. Often it is well exercised; a drunken brawl will give rise to it; but in many cases where they may a few words pass, not in public at all, a mere quarrel of words among some women or some men in a back yard, one party gets angry; perhaps they are afraid to fight; and one goes off to the alderman and makes an information for disorderly conduct.

Mr. CUYLER. Will the gentleman pardon an interruption? I wish to inquire whether he will not examine and see

whether this is the appropriate point at which this amendment should be inserted. The closing clause of this section of three lines is strictly a part of that which we have just passed upon, while that which the gentleman suggests is wholly inconsistent with it.

Mr. EWING. I offer it as a separate section.

Mr. CUYLER. But it ought to come in after this clause: "All costs in criminal cases and taxes on the business of such courts," namely, the courts we have just voted on—"and all fines and penalties shall be discharged only by a direct payment into the city treasury."

Mr. EWING. That has been passed.

Mr. CUYLER. I am very glad to find that it has been passed.

Mr. EWING. I am not particular where this comes in. Hundreds of cases every week I may say, certainly tens of cases every week, occur in our city in which there are convictions for disorderly conduct without the shadow of an offence committed against the law. It usually occurs among the poorer classes of people that have no redress. There is no appeal to a court of record. There is a *certiorari* that comes from a constitutional provision in the old Constitution. Section seven of the article on the judiciary, which we have substantially adopted as section eleven of this article, gives the right to the courts of common pleas to issue a *certiorari* in all such cases, and consequently we have the right to *certiorari* these cases; but the parties cannot appeal there. They must go to court and get the writ, and meantime the accused has gone to jail. It is practically no remedy, and all that goes up on *certiorari* is the record, and that is very often "doctored" up to suit the case after the *certiorari* has been taken out. It is not a practical remedy. Then, again, there is a class of cases in which, by act of the Legislature or sometimes by ordinance of the city councils, there is a penalty annexed to certain acts, and that is directed to be collected as a debt. A suit is brought for that penalty, and it may be that there has been no such act committed as to bring it within the law or the ordinance; but the alderman will give judgment for the plaintiff against the defendant, and there is no remedy but the writ of *certiorari*, and it has been held that in a case of that sort it is not necessary to set out the evidence even and there is practically no remedy whatever. Men have had to pay \$100,

\$200, and \$300 in cases of that sort, where if the facts could have been got before a competent court, no such court would have held that they were bound to pay and had not violated the law. I have no idea that one case in a hundred of these would go up; but I believe such a constitutional provision would prevent a great deal of this injustice. The very fact that the party had a right to an appeal would cause the magistrates to be much more careful than they have been, and an occasional case taken up showing what had been done by them would enable the courts to give the magistrates a lesson that they would regard. I think that, as a companion to section eleven, which we have adopted, giving the right of *certiorari*, they should also have the right of appeal.

The CHAIRMAN. The question is on the amendment of the delegate from Allegheny (Mr. Ewing.)

The amendment was agreed to.

The CHAIRMAN. The fifteenth section will now be read.

The CLERK read as follows:

"SECTION 15. All judges required to be learned in the law, except the judges of the Supreme 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 period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature. All the judges of the Commonwealth shall be commissioned by the Governor."

Mr. ARMSTRONG. I move to amend, in the eighth line, by inserting after the word "judges" the words "of courts of record," and also in the same line, after the word "be," inserting "learned in the law and shall be," so that the sentence will read:

"All the judges of courts of record of the Commonwealth shall be learned in the law, and shall be commissioned by the Governor."

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

Mr. J. N. PURVIANCE. The amendment now moved is a very important one, and I hope the committee will rise, as the hour for the recess has nearly arrived.

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 (No. 15) reported by the Committee on the Judiciary, and had directed him to report progress and ask leave to sit again.

Leave was granted to sit again this afternoon.

Mr. HUNSICKER. I move that the House do now take a recess.

The motion was agreed to, and the Convention (at twelve o'clock and fifty-five minutes) took a recess until three o'clock P. M.

### AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

#### PETITIONS AND MEMORIALS.

The PRESIDENT presented a communication from J. Fisher Leaming, of Philadelphia, calling the attention of the Convention to the subjects of trades unions and strikes among mechanics and laborers, and also the sales of stocks and precious metals on time at public brokers' boards, and praying the adoption of such measures in the Constitution as will prevent the evils arising therefrom; which was laid on the table.

#### LEAVE OF ABSENCE.

Mr. C. A. BLACK. Mr. President: I desire to make a motion at this time. Mr. Purman has been called home very unexpectedly, and I ask leave of absence for him for a few days.

Leave was granted.

#### THE JUDICIAL SYSTEM.

Mr. ARMSTRONG. I now 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 accordingly resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose this morning the question pending was on the amendment offered by the delegate from Lycoming (Mr. Armstrong) to section fifteen.

Mr. BROOMALL. I ask for the reading of the section as proposed to be amended.

The CHAIRMAN. The reading of the section will be had, and then the amendment.

The CLERK. The amendments are to insert in the eighth line, after the word

"of," the words "courts of record of," and after the word "be" the words "learned in the law and," so as to make the sentence read:

"All the judges of courts of record of the Commonwealth shall be learned in the law, and shall be commissioned by the Governor."

Mr. J. N. PURVIANCE. I hope the gentleman from Lycoming will not insist on this amendment at this time, because he has a section here in regard to the associate judges, and the question would more properly come up when that section is reached.

Mr. ARMSTRONG. I think it is proper that it should be stated somewhere in the Constitution that the judges should be learned in the law. That has not yet been stated, owing rather to an omission than otherwise.

Mr. J. N. PURVIANCE. It involves the question of dispensing with the associate judges, and I trust that question will not be brought up at this time and in this way.

Mr. KAINE. I do not exactly comprehend that amendment.

Mr. ARMSTRONG. I have no objection, if it is the desire of the gentleman from Butler, to defer that question.

Mr. KAINE. I wish to suggest the propriety of leaving out the words "commissioned by the Governor," because the Committee on Commissions intend to report a section upon the subject of commissions that will cover the commissions of judges and all other officers that are to be commissioned by the Governor. They will all be embraced together.

Mr. ARMSTRONG. With that understanding I suppose lines eight and nine might be omitted at this place to save time.

Mr. J. N. PURVIANCE. Will the gentleman please state now what his amendment is?

Mr. ARMSTRONG. At the suggestion of the gentleman from Butler I will withdraw the amendment which I offered this morning, as a gentleman from the Committee on Commissions suggests that they will provide a general section covering all commissions. Therefore I move for the present to strike out the eighth and ninth lines in these words: "All the judges of the Commonwealth shall be commissioned by the Governor."

The CHAIRMAN. The first amendment of the delegate from Lycoming is withdrawn, and he now moves to strike out the eighth and ninth lines.

The amendment was agreed to.

Mr. ARMSTRONG. Of course it will be understood, and I desire it to be so expressed on the record, that it is only for the purpose of permitting the same subject to be inserted in another section.

Mr. DARLINGTON. I move to strike out the words "required to be learned in the law" in the first line, for the reason that all judges are necessarily to be learned in the law. We shall by another section abolish all associate judges unlearned in the law.

Mr. ARMSTRONG. That might not follow, because we may appoint judges of police courts.

Mr. DARLINGTON. We shall be done with that by the time we are through.

Mr. ARMSTRONG. I see no use in raising that question at this time.

The CHAIRMAN. The question is on the amendment of the delegate from Chester.

The amendment was rejected.

The CHAIRMAN. The question recurs on section fifteen as amended.

Mr. HUNSICKER. I wish to ask the chairman a question. I find at the end of line one and beginning of line two the words, "except the judges of the Supreme Court." Are these words to remain in?

Mr. ARMSTRONG. Yes, sir; because the judges of the Supreme Court are to be elected by the qualified voters of the State at large, and this is simply to limit the election of common pleas judges to their own districts.

The section was agreed to.

Mr. DALLAS. I ask unanimous consent to make a statement at this time.

The CHAIRMAN. Is there objection? The Chair hears none and the gentleman will proceed.

Mr. DALLAS. I only desire to occupy a moment's time for the purpose of saying that when the fifth section of the present article was under consideration in the committee, I was detained from the committee and had leave of absence from the Convention on a ground which, if stated, would meet the approval of all the members of the committee. I only desire, in order that I may be properly placed on the record, to say that when that section five was adopted, I was not here, and that if I had been I should have protested against its adoption as a member of the Judiciary Committee who had reported adversely to it in a minority report; and when an opportunity arises, as one must occur later in the proceedings of this

body, I shall move an amendment to that section in accordance with my minority report.

Mr. HAY. If the gentleman desires it, as I voted in favor of the fifth section, I will move a reconsideration.

["No." "No."]

The CHAIRMAN. Section sixteen will be read.

The CLERK read section sixteen as follows:

SECTION 16. In all elections of judges, whenever two or more are to be elected for the same term of service, each voter shall have as many votes as there are judges to be elected, and may give all his votes to a smaller number of persons than the whole number to be chosen; and candidates highest in vote shall be declared elected.

Mr. ARMSTRONG. I desire to state to the committee of the whole, in order that it may be fairly understood, that this section was not reported by the Committee on the Judiciary, but it appears at this place for this reason: When the report of the Committee on the Judiciary was ordered to be re-printed, this was pending as an amendment to another section, and it was suggested that it should be reprinted in this connection for the information of the House. I express no opinion upon it at this time, but simply desire that the House shall not understand that this section has been reported by the Committee on the Judiciary.

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

"Whenever two judges are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be so chosen he shall vote for no more than two; and candidates highest in vote shall be declared elected."

Mr. J. N. PURVIANCE. I move to further amend, by striking out all after the word "judges," where it first occurs, down to the word "candidates," so as to make the section read:

"In all elections of judges, candidates highest in vote shall be declared elected."

The CHAIRMAN. That is not an amendment to the amendment. The delegate from Butler will understand that there is a motion pending to strike out the entire section and insert a new one.

Mr. BUCKALEW. This section, or the proposed amendment, will have, if adopted, a very restricted operation, and I will state what that operation will be. By this article two judges are added to the

Supreme Court, and of course are to be chosen at the first election after our amendments shall be approved by the people; and the article also adds two new judges to the court of common pleas of this city, who will likewise be elected at the same election. I am not aware that any other election of judges will be affected by either the section or the amendment, if either shall be accepted by the Convention.

Mr. WHERRY. If the gentleman from Columbia will pardon the inquiry, I wish to ask if the principle will not apply in the districts in which two law judges are to be elected?

Mr. BUCKALEW. It will not apply to the districts of the Commonwealth out of Philadelphia in any case of which I am aware, because the commissions of their judges expire at different times. A possible application, beyond what I have stated, may occur hereafter if the Legislature shall establish new courts. It may establish an additional court of three judges in Philadelphia, in which case, under the operation of this amendment, the minority would be able to select one of the three; and there may be some other courts established by the Legislature. Therefore this debate, as a practical question, confines itself to the two cases which I have mentioned, the addition of two judges to the Supreme Court and of two to the court of common pleas of the city of Philadelphia. But in any case the Convention should agree to what is here proposed as to these courts whatever gentlemen may think with reference to the general subject of reformed voting in its political application in other parts of the Constitution.

Mr. CORBETT. I think that, if the gentleman from Columbia will think it over, he will see that there is only one case to which this section applies, and that is the addition to the Supreme Court. There is nothing in this article which provides that additional law judges in this city shall be so chosen, because that was voted down.

Mr. ARMSTRONG. It was not voted down but only left to be fixed in the schedule.

Mr. CORBETT. It was voted down.

Mr. BUCKALEW. It was omitted, but not rejected.

Mr. CORBETT. It was voted down.

Mr. BUCKALEW. Although not in substance yet it was, perhaps, in form, re-

jected; but I have no doubt it will be agreed to in the schedule.

Now, Mr. Chairman, the Supreme Court at present consists of four majority and one minority judge. By the addition of the two judges that we have added to this court, it will consist of seven, and under the operation of this amendment the majority will have five and the minority two in that court. Then as to the court of common pleas of Philadelphia, that court now consists of, or rather the consolidated court of common pleas of this city will consist of, nine majority and one minority judges, nine to one. By adding two judges to that court, and dividing them as proposed by this amendment, the court will stand ten to two as between the great divisions of party in this city.

In providing for new judges to be added by this Convention to the Supreme Court and to this great court in this city, it is an act of fairness and an act of prudence also to make provision for their division as proposed in the amendment. It will recommend our work to popular acceptance, because it will to a certain extent satisfy that sense of justice and equality among our people which it will be necessary to satisfy and conciliate for the acceptance generally of our work. Every one will see at once that it will be also a measure of justice, and therefore will tend to the acceptance of the whole amended Constitution.

Taking the whole State together at this time, all the law judges of the State being considered, the division stands thirty-nine majority and nineteen minority law judges, or a little over two to one held by one of the political divisions of our people. I shall not speak of the judges proposed to be added in that part of the report which has been passed over. The Committee on the Judiciary propose to add in addition to the judges of the Supreme Court and the court of common pleas of Philadelphia, certain other judges in various parts of the State. If the scheme of the committee shall hereafter be added in the schedule, of these new judges the majority will have ten and the minority four.

The amendment of the member from Montgomery, (Mr. Corson,) this proposed plan for selecting these new judges ordered by the Convention and for any after addition of judges which the Legislature may order or new courts, has the sanction of authority and of experience. It is precisely what was done in the State of New

York by her Convention when new judges were provided for for her court of appeals. Of the six associate judges of that court, each voter was authorized to vote for but four, and a very excellent court was created by that means.

Again, in the city of Chicago, the Illinois Convention provided that the court should consist of five judges, two then in commission and three new ones; that in electing the three new judges each voter should vote for two, the three highest to be elected; and that provision was found to work well. They obtained an excellently organized court.

A year ago the present occupant of the chair (Mr. Harry White) was concerned in proposed legislation for the addition of judges to our Supreme Court. A bill was introduced and passed by the Senate providing for the election of two judges to the Supreme Court, increasing the number from five to six, and they were to be elected, as is now proposed, by a division of them between political parties. In the House of Representatives that bill was passed, changing the number to be elected from two to three, and providing for the same mode of election to secure a representation of the minority. The two Houses disagreed as to the number, not as to the manner of electing them, the Senate being in favor of having but two judges elected together, one to fill the term that expired last fall, and another a new one; while the House was in favor of electing three.

I need not trace the subsequent history of that bill, but it fell between the two Houses, principally in consequence of that disagreement as to number, and also because many members desired that this question of adding judges to the Supreme Court should be left for this Convention, so that we should have it open before us and be enabled to deal with it to better advantage than the Legislature could. But the assent of both Houses of the Legislature was given to the proposition of increasing the judicial force in the Supreme Court, and also to the manner of selecting them which is here proposed. If that bill had passed, Judge Thompson would doubtless have been re-elected to the seat which he had adorned before, and Judge Mercer would at the same time have been elevated to the seat which he now fills. It is now left for the Convention, however, to provide for these new memberships in the Supreme Court; and all considerations of policy and of

justice also, invite us to a support of the change which has been proposed in reference to their selection.

The plan of the gentleman from Montgomery has been familiar to the people ever since 1839 in the choice of election boards, since 1867 in the choice of jury commissioners in the several counties of the Commonwealth, and it has also been made familiar to us by the plan adopted for selecting members of this Convention. Fifty gentlemen of the one hundred and thirty-three on this floor owe their seats here to precisely the principle embodied in the amendment of the member from Montgomery. So that here is no novelty proposed, no untried experiment, so far as that amendment is concerned.

But it is said—and I now address myself to the question of the judgeships of the common pleas in this city—it is said by some gentlemen that a candidate nominated by a political party will be certain of election under this amendment. Well, Mr. Chairman, that is precisely the excellence of the proposition. He cannot be defeated by any ordinary effort in a corrupt election in the city of Philadelphia.

The CHAIRMAN. The Chair is obliged to remind the delegate from Columbia that his time has expired.

Mr. NILES. I move that his time be extended.

The CHAIRMAN. Do five members object to extending his time.

Mr. CARTER rose.

The CHAIRMAN. There are not five delegates rising. The delegate from Columbia will proceed.

Mr. BUCKALEW. The imputation has been made, and it is believed by many, that two or three judges at present sitting in this city have been counted into their seats by virtue of that organized system applied to elections in this city of which we have heard so much. Now, observe, I say nothing against individual members of that court. I think, sir, it is surprising, at all events it is gratifying, that the character of judges in this city and the standing of the courts in this city have remained as good as they have; that they have not sunk low; but let me tell you, sir, that it is impossible that present schemes of electoral action can go on in this city without the degeneracy of the judiciary of this city, and you will eventually have here the same spectacle that has been presented to the contemplation of the whole country by the city of New

York, unless you take effectual steps to prevent such a result.

Stating it in a word, what will be the difference between the plan proposed for electing judges in this city and the former plan, when you are to choose two under the amendment which we are likely to adopt? A corrupt combination in this city under the amendment can possibly count in one judge, I grant you, but they cannot count in both. Under the old plan the one corrupt effort takes both judges. Under the new but one can be successful in that manner, so that this objection that a nomination made by one of the political parties of this city is certain to be successful against a balance of power vote, instead of being a sound objection, is a recommendation for this particular proposition now before the committee. So far as the selection of these judges of the common pleas is concerned, this amendment strikes at the balance of power vote and renders it of no consequence.

Gentlemen think that it is a good thing, where two candidates have been named by their respective parties, that honest voters shall have an opportunity to choose between them and select the better man of the two. That is very well in theory, that is a statement worthy of consideration as far as it goes; but observe what you are to guard against in elections as now constituted is a very different influence. Very true, honest men may control the balance of power between parties, and turn the scale in certain cases; but dishonest men combine together more frequently to do that than do the men of integrity and honor; and the very complaint you have in this city, the very source and origin of mischief and evil in this city, is that the bad men at elections hold this very balance of power to control the destiny of all nominees and bring every man who desires place and position in Philadelphia prostrate upon his knees before them. If he does not subsidize them, if he does not do their work and their bidding, if it is understood that he is not to be subservient to their purposes, they cast the balance of power vote against him at the election and he goes down; and I say now, that if at the next election an honorable, independent and competent member of the majority party of this city shall be nominated for judge under the amendment which we shall adopt, and a member of the minority connected with corrupt elections in Philadelphia shall be

nominated by the minority party, the latter will triumph as certainly as the election is held. You all know it. On the other hand, under this amendment the honorable and true men in each political organization, having their hands untied, will be able to interpose in the election, at least so far as the choice of judges is concerned, and control it. The large majority of each political organization is made up of honest men, and if they see to it that the candidate selected by their party is a true man, they can look forward to the certainty of carrying him against all evil influences.

But, Mr. Chairman, I am admonished that I have consumed the additional time kindly given me, and I do not care to protract the debate.

Mr. NILES. I should like to ask the gentleman if a corrupt man should happen to be nominated by either party, how can he be defeated under this system?

Mr. BUCKALEW. I will answer the gentleman. He can be defeated if the majority of that political organization choose to set up a reform ticket and can poll a majority of their own party in its favor. There is such an organization in this city. I should like to have three judges elected in this city, and I have no doubt that under a fair system of voting, each of the old organizations and the reform organization would elect one judge.

Mr. BIGLER. Mr. Chairman: Like my friend from the city (Mr. Dallas) I must ask indulgence for a few moments for explanation. When he proposed the section that is now pending a few days since as an amendment, I expressed myself very decidedly in favor of it as applicable to judicial elections. I was then under the impression that it was the limited vote, the vote proposed by the member from Montgomery, (Mr. Corson,) and I did not discover my mistake until it was too late to correct it then. I desire to say, as they now stand one against the other, that I have all the while preferred the limited vote to the free vote, and I shall therefore vote for the amendment. I do not intend to commit myself to one or the other beyond its application to these judicial elections; nor do I rise for the purpose of discussing this question. I see that in some measure it is involved in just the difficulties that presented themselves a few days ago; that is, we have not ascertained the use we have for it, how extensively it will be applicable when the Convention shall have gone further with its work. I sug-



gested the other day that it seemed to be proper that this proposition should be deferred, and when the time come apply it as far as it was applicable; but I shall make no motion in regard to it. I only rose for the purpose of putting myself right, having declared so emphatically that I should vote for it with pleasure. I did not intend to declare that I should vote for the free vote with that same measure of pleasure. I supposed I was making my remarks applicable to the limited vote.

Mr. J. N. PURVIANCE. Without committing myself to the principle of limiting voting, holding that entirely for future consideration, I think if this amendment is to be adopted, we had better not make it general at this time. Therefore I offer the following amendment as a proviso:

"*Provided*, That this mode of election shall only apply to the election of judges of the Supreme Court."

The CHAIRMAN. The delegate from Butler (Mr. J. N. Purviance) offers an amendment as a proviso to the substitute of the delegate from Montgomery (Mr. Corson.)

Mr. DARLINGTON. I do not exactly understand as yet how this proposition came before the Convention. It is not a part of the report of the Committee on the Judiciary, and I do not see, as it is not a part of that report, who is responsible for it. How did it get here? Whose amendment is it? Where did it arise from? The gentleman from Montgomery moves an amendment to the amendment; but who is the author of the amendment? I should like to hear it avowed. Who fathers it?

Mr. DALLAS. If the gentleman will permit me, I will defer any remarks on the section until the proper time comes; but I will say now, in response to the gentleman's inquiry for information, that I offered this amendment at an earlier stage in the consideration of this article, and by the suggestion of the chairman, in order that it might come up in what was considered the place best suited to consider it, it was placed here as a section. It is my amendment.

Mr. DARLINGTON. I am glad to be informed on that point. Do I understand that it is the gentleman's own proposition or somebody else's?

Mr. DALLAS. Does the gentleman ask again for information?

Mr. DARLINGTON. Yes, sir. Is it the gentleman's own proposition?

Mr. DALLAS. I believe the suggestion emanated from me. I do not know that it is a proper matter for explanation; but I will add that I had the assistance of a gentleman much better able than myself in preparing the language of it.

Mr. DARLINGTON. I do not think the gentleman needed any assistance in preparing the language.

Now, Mr. Chairman, here are two propositions directly opposite to each other offered to our consideration, and both of them to secure minority representation, as we are told. The proposition of the gentleman from Philadelphia is that when two or more judges shall be elected at the same time each voter shall be allowed to cumulate all his votes upon one if he chooses. The proposition of the gentleman from Montgomery is that no voter shall have the privilege of voting for more than one where there are two to be elected. One proposition is to cumulate the vote; the other to limit it—the free vote as it is called by the gentleman from Columbia; the limited vote as the gentleman from Montgomery calls it; both of them opposed to the principles upon which the government is founded, and to the doctrine which up to this time has been the prevalent doctrine of this State and of the country.

Are we prepared to accept either the one or the other? The other day when we had the same question substantially before us, a proposition to divide the State into districts, each one to elect three president judges of the common pleas, and no man to vote for more than two of them, that proposition being but the base of the other pyramid that was to be raised upon it, limited voting, what was the result? Thirty-four gentlemen voted for it, fifty-one against it. Everybody saw through the disguise; everybody understood that he was voting against this experiment; against this improved, reformed voting as it is called, and in favor of the old system. Now why are we troubled with it so soon again? Is it supposed that the face of the House is changed, that the majority that voted the other day against it are not to be found here now? If the question is to be introduced at any time, I should be glad if it were introduced when we had a full Convention and not when we have thin Houses. There has been no argument offered here yet different from what has been presented before; none in favor of this project which is not stated in the book of the gentleman from Columbia,

(Mr. Buckalew,) which I have read with attention from beginning to end, and which I suppose every gentleman in this Convention has read and studied carefully.

All the arguments that could be adduced, I suppose, we have been in possession of on that side of the question; and on the other side we have the unbroken experience and practice of the government from the foundation of it to the present day. Why are we asked to change this system—what reason is there for it, especially with regard to the judiciary? It is supposed by some gentlemen, so they argue, that an improvement can be made. What in? An improvement in the judiciary? Are your judges to be more honorable, more honest, more upright, elected upon this new plan than those who have been heretofore elected? No man dares say that the great majority of the judges of Pennsylvania are not honest and upright and learned. Who has ever complained of the character and quality of the judges? Have they not all since the election of 1851 been upright? If there are any exceptions, let them be pointed out, and let it be shown that it was politics that made them corrupt. It is not true. They are upright; they are honest; they are learned, come they from what political party they may. Thank God they have been able to elevate themselves above the dregs of party and party politics when they get upon the bench. Now, it is supposed that we can improve them by a reformed system of voting, whereby, according to the proposition of the gentleman from Montgomery, you will have better judges by restricting everybody from voting for them, by saying to every voter "you shall not vote for two, when two are to be elected; you shall only vote for one," the direct effect of which is to make a nomination by a political party an election, just as you made the nomination by a political party of a candidate for this Convention an election.

Mr. CORSON. May I ask the gentleman a question?

Mr. DARLINGTON. Certainly.

Mr. CORSON. Which bench would be more likely to be exempt from political bias where there are two judges, one composed of a Republican and a Democrat or one composed of two Democrats?

Mr. DARLINGTON. I am not prepared to say. I take it all would have a fair chance of being honest if elected by the people.

Mr. CORSON. You have never lived in Montgomery county. [Laughter.]

Mr. DARLINGTON. No, thank fortune; and I never want to live there. [Laughter.] I live in a purer atmosphere than that, I hope. Now, do we not know what party machinery is? We have been through it. Take my county; how does a man get into office there, I mean a man who wants office?

Mr. CORSON. By belonging to the Republican party. [Laughter.]

Mr. DARLINGTON. If a man seeks an office, how is he to get it there? He goes out through the townships and he gets the various wire-pullers in the different townships to send delegates for him to the convention, and he goes upon the ticket by reason of his superior exertions, of his superior anxiety to get there, and by reason of his going through the dirty work that other men will not go through he gets there.

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

Mr. DARLINGTON. Certainly.

Mr. CURTIN. Is not that just the way judges get nominated?

Mr. DARLINGTON. No, sir; at least not in our neighborhood and I apprehend it is not the way that Governors get nominated either. I take it no man goes through the dirty work to get to be Governor. No, it is not the way the judges get nominated. But a man who wants to go to the Legislature knows how to begin. He goes into the townships, he sees some prominent local politician in each, and gets him to stir up the township and send a delegate up, and when he gets into convention he has a majority for the nomination. That is equivalent to an election. Is that the voice of the people? Is that the way a man is to have all politics swept out of him? Why it is the very way to fasten him in the toils of party. He cannot move without having the wire-pullers at his back; and thus the Democratic party, being no purer than our own, friend Corson, not a bit; ours being pure and the Democratic party also pure; nevertheless the result is that he who gets upon the surface and wants to keep there is the man who will take the necessary means to get there. My friend (Mr. Corson) never would go down to that kind of level; I never would go down to it; my friend from Harrisburg (Mr. Alricks) would never go down to it; but men do

get down there, and they do get up by reason of it.

Mr. CORSON. Allow me to suggest that my amendment, if adopted, will provide for electing judges in the same mode by which we were elected to this Convention. Is the gentleman satisfied that that was a mistake?

Mr. DARLINGTON. I am. That was a mistake. It was a mistake, because if the voice of the people had been divided according to the representation of two parties, there would have been a different majority here from what there is. There would have been a majority of about ten or eleven Republicans instead of four or five as there are now.

Mr. ALRICKS. That is, if they did their counting in the same way as in the city of Philadelphia!

Mr. DARLINGTON. Take the votes given and returned to the Secretary's office for the delegates themselves, where there was no cheating, where every man got his full vote, because he got the vote of his party, and make your calculation, and you will find that there are some four or five gentlemen representing constituencies that do not exist of the Democratic party, and twenty-four thousand voters of the Republican party that have no representatives here. That is the way it works. I say that merely in answer to my friend from Montgomery (Mr. Corson.)

Mr. BOYD. Be good enough to name those gentlemen.

Mr. DARLINGTON. It has been running through my mind. I could name them, but I do not like to do so. It is not necessary that I should name them.

Mr. M'CLEAN. I should like to ask the gentleman whether there are not some Republicans in this Convention who have no constituencies and who should not be here, also.

Mr. DARLINGTON. That is very likely too. I do not know how other gentlemen feel, but for myself, party man as I have always been, and yet not always adhering to party, having felt myself at liberty to cross the line when I wished to pick out a better man than I thought we had up on our side, and desirous of being able to do it in the future, I feel that when each party puts forward its best man for an office, or the man it supposes to be best, we still have a choice between those good men. That choice is denied us by the principle

either of the gentlemen from Montgomery or the gentleman from Columbia.

Mr. BUCKALEW. I will ask the member from Chester whether he recollects voting in the Reform Convention of 1837-8 with a good deal of emphasis against the representation of minorities in election boards, and whether he is still of opinion that that was an improper and an unwise proposition?

Mr. DARLINGTON. I will answer the gentleman from Columbia in this way: I do not now recollect what the vote was in the Convention on that subject; but I do remember that the late Thomas Earle, as sterling a reformer and honest a man as there was in the body, although a Democrat, [laughter,] was in favor of the introduction of some such principle into the Constitution; but we all thought it had no business there, and therefore I voted against it. It was afterward introduced into the election law by a bill drawn up by Judge Pearson, when he was in the Senate, and has worked admirably so far as that goes. But that is the only place where it is applicable. Where parties are to go and vote, there should be a man of each political party sitting at the polls as a watcher, to enable every man to know that he and his political associates not only have the free right of voting but have a fair chance of having their votes properly recorded.

The CHAIRMAN. The Chair must inform the delegate that his time has expired.

Mr. DALLAS. I move that the gentleman's time be extended.

The CHAIRMAN. Are there five objections?

Mr. CARTER. I object.

The CHAIRMAN. There are not five delegates objecting. The gentleman from Chester will proceed.

Mr. BUCKALEW. I desire to remind the gentleman from Chester that the question was suggested in debate at that time, and that measure was opposed on precisely the same broad ground that this section under consideration, and the amendment, are now opposed by him.

Mr. DARLINGTON. It may have been; and it is likely that I voted against it because I was satisfied that it did not belong in the Constitution. I am satisfied with the principle as applied under the election law, because in the choice of the judge of election, the selection is made by the party having the majority. That is the true representation of the

whole people, and each party is represented at the election board by the inspectors in order to give to each the opportunity of seeing that no injustice is done. There, minority representation in that way is a just principle. It is right that both parties should be represented in the election board by their inspectors or watchers.

But this has no application to the bench. There is nobody there to watch the judge, for it is not required that there should be two parties on the political bench, each to watch the other. A man who goes upon the bench, acts under solemn oath and is supposed to perform his duty regardless of former affinities, and no one of the many judges of this State would, I trust, so far forget his manhood and his self-respect as to allow himself to be influenced in the slightest degree in any contest between man and man about property by the consideration that either one of the parties agreed with him politically. At all events in my experience in the law—not a short one, for man and boy I have been about the bar for fifty years—I have never seen an instance in which I could perceive that a judge swerved one hair's breadth to the right or to the left by reason of his political affinities or relations with one or the other of the parties to a suit. If any man has other experience let him tell it. If any man knows any judge who ought to be removed from his office by reason of such bad conduct as allowing his political proclivities to guide him in the decision of a case, let him state that fact and let that judge be impeached. But my experience has been as I have stated it, and I think it will be found to have been the experience of every gentleman around me throughout all this broad State.

If then the election of judges since 1850 by a direct vote of the whole people has resulted in the choice of good men everywhere by the majority rule, which lies at the very foundation of our government, why should we change it for this untried experiment? Why now introduce a system the results of which no man can foretell? What have you to base it upon? Upon the example of New York? I noticed the other day, in the observations I then made upon this subject, that in electing judges of the court of appeals of the State of New York they limited the vote as far as the election of the associate judges was concerned. There were seven judges to be elected, a chief justice and six asso-

ciates. The chief justice was elected by the majority, and each voter voted for three of the associates.

Mr. BUCKALEW. Four.

Mr. DARLINGTON. I think not. The chief justice was voted for alone, three associates on each side being voted for by the different political parties.

Mr. CORBETT. Each man voted for four associate judges.

Mr. DARLINGTON. Well, my recollection may not be right; but what does that prove? It only proves that all the men who got there were by an accident good men. I do not deny that they were good men, but the principle of limited voting ceased with this one election in the State of New York. Suppose the term of one of those judges expires, his successor cannot be elected by the minority system. The moment one of the judges dies or his term runs out, some man must be elected by the majority to supply the vacancy.

Here you want to apply this vicious principle, this unknown plan, to the election of two judges, and you cannot apply it afterwards. You are content to elect your Governor by the vote of the majority, as was our famous war Governor, the gentleman from Centre, (Mr. Curtin,) and his predecessors. The majority is good enough to elect him the head man of the government. Why is not it safe to elect our judges by the same plan, especially when, as I have said, no man can put his finger on any case in which it has failed by reason of it having been the act of the majority? You cannot apply this principle to fill any vacancy. Why then introduce it? Why press it? Why continue it? In Illinois they have not ventured upon it as to their judiciary. They have selected their House of Representatives under this plan, and from information I have received from that State, there are already grave complaints on account of it—I know not how well founded. Why, because of an experiment in New York, in the election of the court of appeals, and because of an experiment in Illinois, of recent date, in the election of the House of Representatives alone, even if they suppose it may have been judicious there or has been judicious there, should we be called upon to introduce it not only in the election of the Supreme Court and in the election of the judges of the common pleas, but eventually in the formation of our Legislature; for all of these projects tend in the same direction?

I want to know whether it was ever heard of that a political majority in the State has mistrusted its own ability to elect good men to the various offices which were to be filled. Did the Democratic party in this State ever distrust its ability to elect a proper man for judge of the Supreme Court? If it has, then let it change its policy and come over to ours. Does the Republican party doubt its ability to select by its votes proper men to fill all the offices that are needed in the administration of the government? If so, let it abandon its principles. But no, it is not so. This plan is a device of the minority, whereby they may come into power. It is not a device of the majority. No majority ever doubts its power, and wishes to entrust it to the minority. It is the minority that doubts the power of the majority to choose as good men as they, the minority, can select. I do not care which party is in the majority, and which in the minority; it is the same thing. My friend Mr. Corson unfortunately has been in the minority in Montgomery county, and this may account in some measure for the influence of this question on his mind.

MR. CORSON. That is exactly it.

MR. DARLINGTON. That must be the reason for it. Being in the majority party in my own county, I have never heard any doubt expressed by any member of that party of our ability to fill all our offices with good men without asking any assistance from the Democratic party at all. So you see this is the experiment of the minority. This reformed voting as it is called, this scheme which is known by the name of the gentleman from Columbian (Mr. Buckalew) all over the land, is a device of the minority to gain power, and is not a device of the majority. Now, is it right that we, a Convention, constituted as we are, supposed to be from among the best men of the land, should incorporate into the Constitution a principle heretofore unknown, unpracticed, unsustained by any experiment in any government for any length of time?

I do not wish, Mr. Chairman, to take longer time. I wish to protest, not only in this case but in all other cases, so far as my voice can go, against the introduction of what I deem a political heresy and nothing else—and that I esteem very little better than a religious heresy—a political heresy at war with the principles upon which our government is founded, at war with the only principle on which

the government can be sustained, namely, the right of the majority to govern.

MR. DALLAS. Mr. Chairman: When the report of the Committee on the Judiciary was first referred to this body, the gentleman from Montgomery (Mr. Boyd) announced that he was very tenacious of his share of the honor of that report, and insisted upon it that no one should say that the whole credit of that report was due to the honored chairman of the Committee on the Judiciary. Now, if it is necessary to make further reply than I have already made to the question just asked me by the delegate from Chester, I now with all proper deference state that the merit of this section, if in its form it has any merit, is due as I said before to a gentleman much more competent than myself to choose the language to properly express its purpose. I refer without hesitation—for why should I have any? to the gentleman from Columbia (Mr. Buckalew.) But when the report of the Committee on the Judiciary was first brought into this Convention I had the honor to file a minority report of which I am as tenacious as was the gentleman to whom I have referred of his share in the majority report, and in that minority report I said, amongst other things, that I objected to the report of the majority because it “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.”

How that objection of mine should be made effectual is a matter of utter and absolute indifference to me. The difference between the free system of voting and the limited system of voting is a difference which to me is not material in this connection, and I should very gladly and cheerfully accept, as a modification of my own amendment, the substitute offered by the gentleman from Montgomery (Mr. Corson) if I did not suppose that other gentlemen in this body may have preference for the free system of voting, and it is proper that such difference of opinion as to matter of form should be primarily determined, so that we may finally have the amendment in that shape, which will be most satisfactory to the greatest number of delegates.

To me the form is unimportant. The substantial question is, shall we have a partisan or a non-partisan judiciary in the State of Pennsylvania? The gentleman from Chester (Mr. Darlington) has inquired, “can you point to a partisan judge

in the State of Pennsylvania?" and then triumphantly asks, "if you can, will you do it?" Why, I take it, that there are few delegates on this floor, who—if they even supposed they could name a judge who is grossly and violently partisan—would be willing to do so. I know of no judge in the State of Pennsylvania of whom I would be willing to make the assertion; but I have no hesitation in saying that it is generally known by the bar and by the public, long before a decision is rendered upon a case of political complexion, how the court will probably decide it. Not because the judges are necessarily corrupt; not because they are necessarily bad men; but because they necessarily are—MEN. No man goes upon the bench, elected by one of the great political parties or the other, until his education and association have led him into a fixed habit of thought upon political subjects, and when questions involving constitutional construction or political law come before the court to be determined, he is sure to honestly view them in the light of his previous convictions, and there is always a line, broad and distinct, dividing the two great political parties of the State upon questions of construction of the Constitutions, State and national, and separating them upon all other legal questions involving political considerations. Therefore, I say that while it is right that the majority of the people should select a majority of the judges, so that they should have upon the bench men whose education, training and association will make it probable that they will accept the course of argument upon such questions which may be in accord with the political school of the majority; **but it is equally fair that the voice of the minority should at least be heard, though ineffectually.** It will not be denied by any man that no committee of a legislative body, where parties are closely divided, should be appointed exclusively from one party, and that it would be grossly unfair and unjust that the minority should not be represented on such committee, notwithstanding the fact that the action of such minority cannot extend beyond the mere statement of their dissenting views.

MR. DARLINGTON. Will the gentleman from Philadelphia suffer himself to be interrogated?

MR. DALLAS. With pleasure.

MR. DARLINGTON. Will the gentleman tell me what minority is not represented by counsel at the bar before a court?

MR. DALLAS. There is no minority, I am very happy to say, which is not represented by the bar. There may or there may not, however, be a minority member of the bar engaged in any one case that may be before the court, and the people properly and reasonably look to and read the opinions of the judges upon all the great public questions that come before the courts, and they seldom see and more seldom read the arguments of counsel.

I was about to say, when interrupted, that it is unfair that the whole community should be educated upon political questions, or upon legal questions of political aspect, solely in the views of the party that happens at the time of the election of the judges to be dominant. We have, in the city of Philadelphia, the two great political parties as nearly equally divided as parties ever have been in a community of an equal number of voters. We have ten local judges, five in the district court and five in the court of common pleas, and yet out of these ten judges we have but one who is of the minority party. In one of these courts the whole of the five judges having jurisdiction in all classes of civil cases are entirely of one political party. I say that it is not necessary to render this objectionable, that these judges should be corrupt or that they should be violent partisans in the discharge of their duties; it is enough that they are all honest men, but of one class of political opinion.

It is as important that the whole people—the minority as well as the majority—should have implicit confidence in the bench as that the bench should be deserving of confidence. You take from the judges the faith of the people in their fairness, and you might as well have judges undeserving of their faith. I repeat that in the city of Philadelphia, a case involving political considerations is always supposed by the people to be decided according to the party affiliations of the judges. The courts of Pennsylvania, like Cæsar's wife, should not only be virtuous, but be above suspicion. The whole people should have confidence in them, and I do not believe that you can secure that confidence unless there are men of the minority placed upon the bench—one man, at least, in whose views the minority will have absolute confidence; and whether you attain fair majority representation by the system of limited voting proposed by the gentleman from Montgomery, or by that of the

free vote suggested by me, is a matter which I consider wholly immaterial.

Mr. MANN. I confess, Mr. Chairman, that this is one of those questions which it is very difficult to discuss with any great degree of satisfaction, because there are so few data on which to argue. It seems so much like an experiment that many people are afraid of it; and I judge that with gentlemen who have given this subject the greatest attention there is some doubt as to how it may work, and these doubts I suppose are operating upon all of us to some extent. But there is in the mind of every honest man, I take it, so strong a desire to elevate to some extent the judiciary, and to take away from it some of the suspicions and aspersions that have been cast upon it, that it seems to me it would compensate for an experiment.

It is no answer to this declaration to say that the judges have been upright and honest, and have given their decisions without regard to politics. The question is, have they rendered those decisions in the entire confidence of the people? It is just as necessary that the courts should have the confidence of the people as that they should be upright and impartial in their decisions. Now, is it possible that there shall be this entire confidence on the part of the people if by any accident the judges of the Supreme Court or of the lower courts shall all be of one political party? I apprehend there will be great difficulty in keeping the confidence of the people under those circumstances. Certainly there would be a better opportunity to retain their confidence if the judges were not all of one political party.

Some years ago, when there seemed to be a pretty strong prospect that all the judges of the Supreme Court were to be of one party, I confess myself to have entertained great anxiety on that question; and I am not so illiberal as to be willing to impose on others an anxiety which I felt myself. I would have been very glad at that time if there had been some provision in the Constitution whereby I could have seen that by no possibility could all the judges be of one political party; and remembering the anxiety I felt myself at that time, I am willing now to place in the Constitution a provision that shall prevent that anxiety to myself or to anybody else hereafter. What I desire to be relieved of myself I am willing to relieve others from, and I do not see any other way than this to relieve the

people, for I am but one of them. I suppose the anxiety which I once felt others have felt, and will feel again under like circumstances, and I know of no other provision than something similar to the one now under consideration to save the people from that kind of anxiety, and I submit it is worth an experiment even to save so much anxiety to the people and to retain the confidence of the people in the impartiality of their courts, for I maintain that it is just as necessary to maintain that confidence as it is to maintain the integrity of the court.

About that I do not propose to say anything, because the mere discussion of such a question is injurious. We cannot even discuss that question here, and therefore I deprecate its introduction into this discussion, because even an allusion to the integrity of a court is detracting from its character and from the confidence the people should feel in it. I will, therefore, not discuss it. I will simply say that it seems to me it would be very difficult indeed to retain the confidence of the people if by any accident the Supreme Court should be allowed to have upon its bench judges belonging all to one political party.

It appears to me that we should prevent that, and we will prevent it by the adoption of either one of the propositions now before the committee. I would prefer I believe the amendment of the gentleman from Butler to apply this principle only to the Supreme Court; but as I apprehend that will hardly meet with the favor of the committee, I shall content myself with supporting the amendment of the gentleman from Montgomery.

I agree with the gentleman from Clearfield (Mr. Bigler.) I am not prepared to support the proposition as it is printed in this report. I do not understand this free vote system. Notwithstanding the very clear illustration the gentleman from Columbia has given of it, I do not yet understand it. I do not propose to vote for it, for I will support neither here nor anywhere else a proposition which I do not understand. I do understand the amendment of the gentleman from Montgomery. We have had it in operation for years in Pennsylvania. As has already been referred to in this body, we applied it years ago when there was in the Commonwealth great anxiety and great fear that the elections all over this State were being demoralized and corrupted. We applied then as a remedy a proposi-

tion to elect upon the board of election officers men of different politics and we elected them precisely in the manner proposed by the gentleman from Montgomery; that is, that there should be two inspectors elected for every board and each voter should vote for but one, the precise proposition which the gentleman from Montgomery proposes to apply to the Supreme Court.

What was the effect of the passage of that law upon the people of Pennsylvania? It restored confidence at once; and from that day to this, through the entire rural portion of the State, there have been pure elections. There has been no corruption at the polls under that law; here and there we have had rare instances, I admit, in cities throughout the Commonwealth, or in very large villages possibly, but through the entire country in the rural districts the working of that law has been valuable, healthy; it has restored confidence; it has accomplished a great good. It therefore must follow that a principle that works so favorably in that direction may be expected to work as favorably in restoring confidence in other directions.

We have it again in the election of jury commissioners. There came to be a crying demand for reform in the selection of jurors in some portions of the Commonwealth, not in all the counties, but there was great oppression and great injury done in many counties of the State because of the selection of jurors, the officers selecting them being all of one political party. What was the remedy? To elect jury commissioners on the precise principle provided for by this amendment of the gentleman from Montgomery, and what is its effect? It has restored confidence and harmony in those counties where there was such a complaint of oppression and injustice. It has eliminated politics from the jury-box. The report made from all the counties which asked for this law has been that its working has been salutary, it has worked great reforms. There is a second illustration, then, of the beneficial workings of the principle stated in the amendment of the gentleman from Montgomery.

Mr. Chairman, we have a third illustration of the beneficial effects of the working of such a principle as that in the election of the delegates to this Convention, and I ask the attention of delegates to the effect of the principle here. The delegates to this Convention were elected during the

hottest political contest this country has known for years, in the midst of a Presidential campaign, when in this Commonwealth particularly the public mind was stirred up to its utmost tension and excitement on the subject of politics; but this principle of electing delegates came into operation and it dispelled entirely almost from the selection of delegates the question of politics; and here are one hundred and thirty-three delegates elected in the heat of a Presidential campaign coming together with scarcely a shade of politics in their discussions. What has done it? Not that the men here elected had no positive convictions upon political questions, but because the manner of their selection removed them from the effect of these feelings and they come here without any of these prejudices, and when a gentleman rises to speak here it is scarcely ever thought "to what party does he belong?" The question of politics has scarcely been introduced in the discussions of this body. What is the reason for it? Can any gentleman give any other reason than because of the manner in which the delegates were selected to this body? No political discussion entered into their election. They were selected by the people of the several districts because of their supposed fitness for the position, and I believe all of them, or nearly all of them, were known partisans, strong partisans; but because of the manner of their selection they came here without partisanship.

The inference I draw from this is favorable. If a Convention of delegates can be selected on this principle, and can meet together without party feelings and party prejudices, and avoid party discussion, surely it is worth while to try whether courts cannot be elected on the same principle. I believe that it does work in that direction. Therefore I will favor this proposition. That is the effect here clearly. I speak merely from my own convictions, from my own experience. I know very well if I had been compelled to contest the campaign in my district for a seat in this Convention; if I had been compelled to meet an opponent and to discuss political issues in the campaign as preparatory to my election here as a part of the contest, I should have come here with very different feelings. I could not have looked across the way at my friend who is on the opposite side of politics, and have shaken hands with him on every occasion. I should have felt constantly that he be-



longed to another party and I would be giving him a rap as often as I could.

That certainly would have been the feeling if I had been compelled to go through a political campaign to obtain a seat in this Convention, and I believe that would have been the effect upon every other delegate. Just the reverse of that was produced by the manner of the election, and the amendment of the gentleman from Montgomery proposes to elect judges on the same plan, a plan that has worked so well in the choice of delegates to this body. I believe it would work as well in the selection of judges, and shall therefore vote for the amendment.

The CHAIRMAN. The Chair is obliged to remind the delegate that his time has expired.

Mr. BOYD. I move that it be extended.

The CHAIRMAN. Are there five delegates who object?

Mr. CARTER rose.

[Several Delegates. "Go on."]

Mr. MANN. I have only a word or two more to say.

I believe, in addition to the arguments I have given in favor of this plan, that it will have the effect of entirely removing all politics from the bench; but that it will also remove from the minds of the people the fact that a judge is of one political party or the other. I believe that is the most beneficent feature of this proposition. I am not so much afraid that politics will enter into the courts as I am that the people will feel that it does; and I believe that this method of electing judges will remove that idea from the people themselves.

Again, Mr. Chairman, this method of selecting judges will compel the conventions that nominate judges to put forward their very best men. They will know that the other party when it comes to meet will nominate a man who will certainly be elected. Neither party can afford that the other shall have upon the bench a superior man if it has been within its ranks a man who is the peer of any in the opposite party, and the result will be that this method of electing judges will secure a higher class of men to be nominated. It will compel it just as the jury law compelled the parties to nominate their fairest and most upright men as jury commissioners—an insignificant office which no man would take for its emoluments or its honor; but as far as I know the best man in any county will take it simply for the reason that he is

the representative of his party, and he feels that his party is obliged to put its best man in that position to meet the other best man coming from the other party.

That will be the effect here in the nomination of judges. Each party will be compelled to nominate its best man, and having nominated him there will be no political contest in the canvass. You will take out of the canvass for the election of judges all allusion to politics, all questions about politics; it will remove it entirely. Men will go on to the bench without any regard to their political proclivities. The people will forget to which party they belonged and will have greater confidence in them, not only in their integrity but in their impartiality.

For these reasons, Mr. Chairman, I shall favor this proposition. It is an experiment, I concede. I would prefer that we should apply the principle simply to the Supreme Court, and then if it works well there the Legislature of the State would undoubtedly propose an amendment to the Constitution providing for carrying it into the election of other judges. I should be glad, therefore, if the idea of the gentleman from Butler could be accepted and that we should apply this simply to the Supreme Court. In any event, if we should do that it could be applied to the election of but six men, because we have already provided in the Constitution that the Supreme Court is to consist of seven judges, one of whom will have to be elected on the present majority plan, and it could apply to but six men, and I ask any gentlemen on this floor to say what possible harm could come from the election of six judges of the Supreme Court on this plan.

I have already pointed out what good it will do, and if I am mistaken I will thank some gentleman to point out wherein I am in error. I affirm that it will give the people greater confidence in the court, and that of itself is a strong argument in its favor. I have shown by illustration that it will take politics away from the consideration of the court. In answer to this, I ask any gentleman to say what harm will it do. This is no executive office, this is no legislative office; the government is in no manner connected with the court; the court is simply to declare what the law is; to construe the statutes that are passed and to declare what the unwritten law is. That is all the court is to do. The majority will rule, and the

adoption of this principle as to judges, as I said before, will in no manner affect the entire control of the majority over the legislative power of the government. It will simply affect the election of judges, and no man here is very clear that the election of judges by a majority of the people is the best way. There is great doubt on that subject. There are a large number of delegates who believe that it would be better to have them appointed by the Governor. This is simply a method of selecting the judge who is to declare the law; and the truth is that, as under the present system, those most connected with the practice of the courts will nominate the judges. Now, is it worth while to say that they shall be selected by and taken from those belonging to one party alone? Are not the members of the legal profession of one party as capable of selecting a good judge as those belonging to the other? I am in favor of having the whole legal mind of the State represented upon the bench, and thus securing greater ability and impartiality.

Mr. BIGLER. A few words, Mr. Chairman, will serve my purpose. What I had intended to say, and what really brought me to the conclusion long ago to favor the amendment of the delegate from Montgomery, has been well expressed by the delegate from Potter (Mr. Mann.) It is because this principle will manifestly take the judgeships out of politics that I prefer it. Every experienced man must see at once how completely the election of judges will be removed from politics under this principle.

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

Mr. BIGLER. Yes, sir.

Mr. MACVEAGH. I ask the gentleman whether this amendment does not put it absolutely in the power of the party caucus of each set of politicians to put whoever they choose on the bench of any court?

Mr. BIGLER. I will answer that question. I agree that so far as the nominations are concerned under this plan, they will stand as they would under the old form of election; and a great deal will depend on the discretion and propriety of those who control the nominations. The gravest responsibilities will rest upon them. I have always thought that there are many who neglect them who ought to attend to those preliminary steps.

But beyond all that, to my mind, the reasons in favor of this change are conclusive. If you adopt the limited system of voting, when the nomination is over, the contest is over so far as the candidate for judgeship is concerned; he is not in controversy; he is not in acrimonious dispute; the result as to judges under this limited system is predetermined; it is known. Now, they are nominated at the primary meetings of the respective parties, and the names of the candidates placed upon the ticket, and we all know how vigorous those campaigns are in close districts, and being contested in this way in the ordinary form, where the fate of the candidate for the judgeship depends on the strength of the head of the ticket, you see how liable that candidate is to be drawn into the ordinary criticisms of politicians, how he may be assailed and impugned, and if possible prejudice excited in his mind; and the people more or less partake of this feeling in a closely and warmly contested campaign. But under the limited vote there is no occasion for either party to say anything about their candidate for judge, and they take no notice of him; and as was well said by the delegate from Potter in reference to the election of this body, in the acrimonious campaign of last fall no man said a word about the delegates. They were not canvassed; they were not compared; but it would have been otherwise under the old system of voting, for the reason that in a contest under the old plan one name is dependent upon another for strength in the struggle, and one is assailed because it is understood to be weak, and you are obliged to have your judges nominated so that they may be elected under a system that involves all alike; they will be held right up like your political nominations and criticized just as freely.

I therefore say, in answer to my friend from Dauphin, that under the old system the contest goes far beyond the nominations, because up to the last hour the struggle is equal; the fate of the leader of the political ticket involves that of the nominee for judge. I agree that in the primary selections there are sometimes grave mistakes; but my principal reason for supporting the limited vote is because when the nominees are selected the struggle is over; there is no contest that excites prejudice on the one hand or on the other, and the judge assumes his place knowing that; the people feel that the

judge knows that there is no man who can stand up and signify that he elected this man or that man judge.

Mr. BROOMALL. Mr. Chairman: The argument urged by the gentleman from Clearfield (Mr. Bigler) with so much force and earnestness is precisely my strongest objection to this whole system. We have, by a large vote, decided that we will not entrust the appointment of judges to the Governor; yet the Governor is the servant of the people, elected by them and responsible to them, and hence under every inducement to do as near what the people want him to do as he can. We have refused to entrust the appointment of the judges to him, a legal functionary, and now we propose to leave the appointment to a political caucus. That is just what is proposed here, and that, forsooth, is said to be the beauty of the system; that the election of judges having proved to be a failure, they are hereafter, wherever it can be done, to be appointed by a political caucus, irresponsible, elected by nobody, representing nobody, merely the political wire-pullers of the district in which they happen to be. That is the proposition.

The gentleman from Dauphin (Mr. MacVeagh) asked a very pertinent question, and it was a question that was upon my mind to ask several of the gentlemen who have advocated this plan on this floor. Probably they do not see that it is a humiliating acknowledgment that the election of judges by the people has proved a failure and has to be abandoned by a trick,—not by square voting down, as we might have done, but by a trick. Suppose some gentleman was to propose here the direct question that in the district composed of Delaware and Chester counties, for example, the judgeship being vacant, whoever happens to be the leading wire-puller in the district shall appoint the judge; what would this Convention say to such a proposition? And yet that is this scheme exactly, and it is said to be the "beauty of the proposition." I know that nominations are too often equivalent to elections. That is an evil inseparably incident to our system. I know it is too much the case that where a party largely in the majority nominates, it may sit back and say: "The thing is safe; nobody can defeat our candidate." But at least in that case the people have the choice between two nominations, both of them made by the same kind of wire-pullers. By this system they must take

them both. That is it, nothing more, nothing less. It gives the election of judges to the politicians of the district instead of the people. It is a step retrograde. It is abandoning the elective system altogether, because it is said if you do not make a nomination an election the judge will have to submit to the ordeal of the people, and then he will have to be in hot water until the time of his election. I hope he may be; and I hope there may never be a moment from the time the wire-puller's name him until the time the people endorse him, in which he does not feel that the people may reject him, and can reject him if they do not like him. But this proposition saves him; it renders him independent altogether. That, I say, being the argument of the gentleman from Clearfield in favor of the system, is my strong argument against the system.

Our case has been referred to as an instance showing how well this plan has succeeded. That is a kind of self-praise in which I have not been very much in the habit of indulging. It may be that that is the reason we are so much more upright and honest than the members of the Legislature, elected by the same constituents, and nominated by the same politicians; but I confess I do not see either the result or the cause. Every gentleman present knows that the election of this Convention was a farce; that not a man of us was submitted to the votes of the people, except as an empty form, that we were named by politicians, and the people took us because they could not help themselves.

Mr. HAY. If the gentleman will allow me to correct him, that certainly was not the case with some gentlemen here.

Mr. BROOMALL. Every member of the Convention, I repeat. I do not know what particular case the gentleman alludes to. There may have been some extraordinary spot in the State of Pennsylvania where the nomination did not constitute an election, but I have not been made aware of it.

Mr. HAY. Is not the gentleman aware of the fact that in some of the counties double the number of persons were nominated that were elected; and the people had a choice between them? That was the case with the minority in the county of Allegheny.

Mr. BROOMALL. In a very few cases possibly. I believe that was not done in the Montgomery district, where it might

have been done, and where the friends of the gentleman who offered this amendment (Mr. Corson) lost a delegate by not doing it. But I was not informed, and have not been informed, of a single instance in which that occurred. There may have been such instances.

Our case, therefore, is not an argument in favor of the system. Are we better than we would have been if the people had nominated us? Are we sure our body is better—are we sure it is not worse—than it would have been if, in the case of every one of us, there had been a square, direct choice between the individual named and some other man of the opposite party equally good and equally respectable? I am by no means sure of it.

Mr. MANN. As the gentleman refers to me I will say that I did not argue that the delegates were any better; I argued that it took politics out of this body.

Mr. BROOMALL. I do not think it took politics out of this body. Politics are out of this body always unless political questions are up. Are politics out of this body on this question? Not quite, because the question has a semi-political aspect. Let a political question come up and you will see how soon gentlemen will be arrayed upon one side and the other. But the questions before us are not political; we are discussing matters of organic law; and gentlemen's minds do not differ upon questions of that sort, except upon very rare and unimportant occasions. That is why we are not political here.

Mr. MACVEAGH. I should like to ask the gentleman whether in his judgment the mode of electing this Convention did not organize it victoriously for one political party?

Mr. BROOMALL. The mode of electing this Convention was not as good in principle as if it had been appointed by some good body responsible to the people, such as the Governor, or the Senate, or the Supreme Court; and it is well that we have as good a body as we have, because the chances were against it. We were appointed by politicians, nothing more, nothing less; and that is the result of all these schemes of improving upon the good old rule adopted by our forefathers of letting the majority rule within the limits of the organic law.

The case of inspectors of elections has been referred to. I grant that in that in-

stance the matter works well, because every question there is a political one, and it is proper that both parties should be represented in the board. There it is representation; each party is represented in the board. God forbid that any party should ever be represented on the bench! In that board the questions are political, and it is proper that the parties should watch one another; but on the bench the questions are judicial. Does a Democratic lawyer look upon a question of law in a different point of view from what I do or my colleague, (Mr. Darlington,) who is so earnest on this question? If he does, I should like to see the Blackstone he reads. Is there a Democratic Coke to read and a Democratic Bacon? Are there Democratic reports of our cases? The questions are judicial; they are of law; and a judge should know nothing about politics.

This plan is the very means of bringing politics upon the bench, because if you have three judges, and two of them are Republicans and one Democrat, there is a majority of Republicans upon the bench and it invites politics; whereas, if they are all of one party, no politics will be invited there, and the questions not being political, the judges will forget their politics. I would as soon submit a question of law to a Democratic judge as a Republican judge. I have done it with the same confidence always, never hesitating.

It has been said by the gentleman from Potter that he prefers limiting this plan to the Supreme Court. It is just there where the occasion is least to adopt it, on the gentleman's own hypothesis, because there we have already provided that there shall be no more politics upon the bench. By lengthening the term to twenty-one years we have cured that. When a judge goes there, we shall hear nothing more of his politics. It will be as it used to be, under the good old tenure of good behavior, where no man in the State knew the politics of the judge. I did not know the politics of the judge in my own district. It has only been since the terms have been shortened and since judges have been obliged to go back to the politicians for nominations that politics have been suspected even of being upon the bench. In the case of the election of judges of the Supreme Court, whatever evil may have arisen from their being all of this or that mode of thinking upon politics has been cured by the lengthened tenure. No judge will be re-elected, and hence no judge will go back to the politicians or

will be in any way beholden to political parties.

The CHAIRMAN. The Chair must remind the delegate that his time has expired.

Mr. BROOMALL. I hope I shall have the time I lost by interruptions.

The CHAIRMAN. If there are not five delegates objecting the delegate will proceed.

Mr. CARTER rose.

The CHAIRMAN. The delegate will proceed.

Mr. BROOMALL. I have only one more thing to say, and that is this: Gentlemen point us to the cases in which this principle has been tried but they do not name all. By the act of the second of June, 1871, this principle of cumulative voting was applied to the boroughs of the State, and as far as I know it was exceedingly unsatisfactory to the people, and the result was that by the act of twenty-eighth of March, 1873, that act was repealed. It provides:

"That so much of the third section of the act approved the second day of June, A. D. 1871, entitled 'An Act for the further regulation of boroughs, as authorizes each voter to bestow his votes for town council singly upon six candidates or cumulate them upon a less number'"—precisely the same as this—"be and the same is hereby repealed."

It did not do. It has been tried and found wanting and been abolished. Do not let us put a future Convention to the necessity of getting rid of our bad work in the same way. We can easily get rid of an act of the Legislature, but not so easily of the organic law.

Mr. BIGLER. Will the gentleman inform us what principle was substituted in place of the one repealed?

Mr. BROOMALL. The good old rule of government by the majority.

Mr. BIGLER. I thought it was the limited vote.

Mr. BROOMALL. No, government by the majority. It is simply the repeal of that provision. I have the act before me; and that left, as I understand it, the old system of our forefathers, government by the majority in force.

Mr. BUCKALEW. I rise to an explanation in regard to what the gentleman from Delaware has just said. The act of 1871 is very much misunderstood. It applied to none of the leading towns of the State because they had all been incorporated under special charters and were not affected. It only applied to small towns

which had been incorporated by the courts in recent years, and it had no general application and trial in the Commonwealth.

Mr. BROOMALL. It was tried in my district.

Mr. BUCKALEW. I was going to add that with regard to that act, its character and effect, I shall speak on a proper occasion. I only interpose at present on the point I have mentioned.

Mr. STRUTHERS. Mr. Chairman: This section embodies the new-fangled and extraordinary proposition of cumulative suffrage, and the amendment of limited voting. I regard it as an attack upon the freedom and equality of the ballot, and calculated insiduously to undermine the foundations of freedom. Its advocates embrace in their scheme also, I understand, what they call restrictive voting. Both branches of the scheme are equally obnoxious, and in my view, pernicious innovations, having the same tendency and effecting the same results. I cannot vote for any section embracing either. I am opposed to both branches of the scheme under all circumstances and in all their applications. I regret that party politics have in this or any manner been introduced into the deliberations of this body. But the delegate from Columbia, a few days ago, in apparent forgetfulness of the events of only last year (which handed over to history but *one great party*) announced very emphatically that "*two great parties* always have existed and always will exist in this country." And he and some others have evinced a decided and almost morbid sympathy for the minority party. It must be provided for and sustained by the Constitution; and this scheme of restrictive or cumulative voting is the recognition or provision asked for. Let us look at it for a few minutes.

Our present Constitution, in the Bill of Rights, provides in terms, "that elections shall be free and equal." Rulers derive their rightful powers from the ruled. The will of the people must be obeyed. The expression of that will, where differences of opinion prevail amongst the people, is properly by majorities or pluralities. These propositions, expressed in whatever form of words they may, are familiar axioms in representative forms of government, and of universal acceptance wherever freedom exists.

What do we understand by freedom and equality of elections? The answer is

found in the universal practice which has always prevailed of allowing every qualified voter free access to the polls and the unobstructed privilege of depositing one ballot for each officer to be chosen. The independence and liberty of the citizen depends mainly upon the maintainance of the right to have his say in the selection of each one of those who are to make, construe, or administer the laws by which he is to be governed, and upon which the security of life, liberty, and property must depend.

The limited scheme proposed not only subverts the principle of majority rule, but absolutely prohibits the citizen, under certain circumstances, from voting for one or more of the judges, members of Legislature or other officers to be chosen. Where three are to be elected in the same district at the same time, it allows him to vote for but two of them. Yet the one he dare not vote for is to have the same power over him and his interests as either of those he voted for, and that, although perhaps not more than a fifth or even a tenth part of the electors voted for him. You would then have a judge, member of Legislature, or other officers, as the case might be, ushered into office and power, without the approval and against the will of the great body of the people of the district. Could he in accordance with any recognized principle of freedom or equal suffrage, be installed as the representative or agent of that district? The common rule applied in cases of contested elections every year would forbid it. But these rules are to be *over-ruled* by Constitutional provision, the rights of the people trampled upon and disregarded, and the district to be misrepresented. And what excuse for all this? Not a single argument, based on principle, has been advanced on this floor in its support, nor do I believe there can be. It can only be asked as a boon of magnanimity, extended by the strong majority to the weak, and generally erring, minority. I can see no other plausible excuse for this extraordinary entrenchment on sound principle. But if the principle is sound when applied to elections where three are to be elected to the same office at one time, it must be equally sound when one of the three is to be elected each year, and the only difference in applying it would be that for two years the majority would vote and elect, but the third year they should not vote; thus allowing the minority to have their man. It would be substantially

refusing the franchise to the majority every third year, or for one-third of the officers. The cumulative would work the same results.

In practice, if introduced, the system, particularly the cumulative or *repeating* branch of it, would be seized upon by the ring politicians and ballot manipulators, and greatly aggregate the abuses already so loudly complained of at the polls.

But what advantage could accrue from placing on the bench or in the Assembly a man not chosen by the people, but named by a minority, in many cases a very small minority? I cannot conceive that it would promote judicial purity, or the dispatch of business in the courts. It certainly would not inspire greater confidence in the decisions of the courts. It would impart to the judges a partisan character, and annoy and disturb their counsels. The minority judge would consider it his chief vocation as a partisan to embarrass and bring into disrepute the doings of the majority, for which he is not responsible. In the Legislature it would and does work in the same way.

Whilst the minority man could have no power for good, I see no reason why he should be there. I am decidedly opposed to any provision which will place him there at the expense of sound principles.

Mr. WRIGHT. Mr. Chairman: I only want to utter a word or two on the matter under consideration, and I do not want my time extended, either. [Laughter.] When the Constitution of 1838 was adopted, giving to the Governor the power of appointment, and the Senate the power of approval, that I considered to be precisely right, and I could not have devised any plan for the selection of judges better. However, afterwards, when another proposition to amend the Constitution was proposed and it was left to the people to approve, I cast my vote against that proposition. I desired the appointing power to remain where it was; but the franchise was given to the people of the Commonwealth to elect judges, and now I do not believe that this Convention has the power to take it from them, and I go, therefore, at the present time for their election, and shall vote for it—not because I believe it to be the best, but because I believe that any other provision would greatly endanger the entire instrument. That being the case, how are these gentlemen to be placed in this position of high

authority? Why, the remark has been made here that it would be by a caucus nomination. So it would; and how can you help it? It will be a party nomination; it must necessarily be so. But I deny, sir, that a Convention of the people of Pennsylvania, representing either party, is entitled to the appellation of a caucus. No, sir; when every county sends up its delegation and they assemble in Convention, it is something above a caucus. It is the act of the people through their political delegations.

There is a great beauty in this provision. I was glad that it was brought before this body and I hope it will pass, for I know that the people will endorse it. Then when each party assembles and nominates its candidate, the conflict is over. Each voter, though two are to be elected, casts but one ballot, and as the gentleman from Clearfield (Mr. Bigler) has so well explained it, there is an end to all political conflict, and the officers elected go into their positions of power as quietly and as gracefully as the members of this Convention came into theirs. I think that was the most beautiful spectacle that the people of this Commonwealth ever beheld; that one hundred and thirty-three gentlemen of high character and ability should have been elected to their places here without buying a vote or firing a gun or descending into the sloughs, or invoking a ballot. Now, it is not for me to characterize these gentlemen. They are before you and the country, and I doubt if better selections could be made.

And how were these gentlemen placed in nomination? Many of them by State convention of each party, representing in a body the people of the entire Commonwealth. So in the city of Philadelphia there were gentlemen placed in nomination in the same manner and form, and to that system we are indebted for the introduction of some of the soundest legal minds and ability that by any means could have found their way into this body. Suppose the nominations had been made in the usual form and by ward politicians, and these gentlemen of the midnight caucuses had nominated the men who were to come to this Convention—who would they have been? Not the Merediths, the Cuylers, and the Biddles, and the men of that ilk.

I believe it is the wisest proposition yet brought before this Convention or before this country, that the election of the judiciary shall be taken out of the mire

and mud, and slush and slum of political organizations. It is a grand and glorious thing that we shall have by this manner of putting candidates in nomination, men who will be elected without raising a hand or spending a dollar; and I never shall vote for a principle with a greater willingness and freedom of heart and soul than to adopt this measure for nominating the men who are to expound our laws; and I confess that I was astonished that a solitary voice in this body should be raised against a proposition so reasonable and so just to obtain ends so mighty and so important to the people of the Commonwealth.

Now the fact that caucuses are to nominate amounts to nothing. Somebody must run; how is that individual to be indicated? Would you have one thousand or one hundred men running for an office, what chance would there be for an election? No, sir, the parties have to get together and put their best men in the field and then they go into office without the candidates being obliged to hunt up votes or spend money corruptly to procure majorities.

I only rose to say that I endorse this principle with all my heart. I shall not vote for it now, and always whenever an opportunity presents, whether it applies to the Supreme Court or the common pleas, or to school directors or to members of the Legislature. Wherever more than one is to be elected I say it is a commendable way of selecting them to let each man vote for one where two are to be elected, or to vote for two when three are to be elected, as proposed in the amendment of the gentleman from Montgomery.

Mr. J. PRICE WETHERILL. Mr. Chairman: I intend, in the few remarks I have to make on this subject, to be extremely practical. I must confess that this entire system in theory is full of great beauty; but it behooves us, in this Convention to look at it in a practical light and to ascertain precisely which of the two systems that we have before us is the better. This Convention, if I understand the question aright, has for the first time here presented the two questions as to be free or limited voting, and we ought to see which of the two is to be preferred. We ought to compare them so as to decide which one we believe to be the best; whether we conceive the free vote to be the best, or whether we conceive that the limited vote presents greater advantages.

And as we decide this question, so shall we hereafter, in every article where this sort of vote will occur, place there that mode which we now select.

What has been our action to-day? I do not think that we have been consistent. We have to-day given the city of Philadelphia with regard to her police magistracy, without any discussion, a limited vote. No discussion whatever was elicited; but because these courts of police were confined to the city of Philadelphia, and the county outside of the city had no interest in the subject, the limited vote was adopted as a matter of course, whether it is the true principle or whether it is not. Now we have offered by my colleague from Philadelphia, (Mr. Dallas,) and drawn by the gentleman from Columbia, (Mr. Buckalew,) a section in this report which declares that free voting is the only true system. In the same article we have applied to Philadelphia, as a panacea for some of our troubles, the limited vote. When we get to the State we find as a panacea for our troubles that we there require a different sort of vote. It is a little strange that we should find on the one side gentlemen framing an article carefully and prudently in support of the free vote, and at the same time rising in their places and advocating the limited vote.

Now, as a layman upon this subject, knowing its importance, and feeling that what we do to-day, we must, if we are consistent, live up to hereafter, through the various articles which we may vote upon, it does seem to me an essential matter and an extremely important matter for us to decide, if we intend to have this system in the State, whether the free or whether the limited vote is the best.

Now, sir, I do not think, as far as I am concerned, that we are ready for so important a question as that this afternoon. I hear on all sides objections. If we had the opportunity fairly to look at it, what should we find? The voters in the State of Pennsylvania, if you please, as taken by the vote electing delegates to this Convention, amount to about three hundred thousand, and if we have seven judges of the Supreme Court to elect on this free principle, how does it work? One hundred and fifty-one thousand would be the majority of the three hundred thousand, and twenty-two thousand votes on this cumulative principle could elect a Supreme Judge. That is a dangerous power. I know something of the working of the combinations in the city of Philadelphia,

and when I know that they can control, perhaps, eighteen thousand votes to-day, do I not know that they will move heaven and earth to get a few thousand more, and by controlling twenty-two thousand votes, they control a judge of the Supreme Court. As I said before, is there merit enough on the other side of the question which will overcome this evil?

I have been told all along in regard to the question of the limited vote, that if we would free ourselves from the weight under which we now stagger politically, the only true way would be to cut ourselves loose from party tyranny, and to free ourselves from the crack of the party lash. Now, sir, my objection to this limited vote is that we are not free either from the one or the other; but by the system which the gentlemen so earnestly advocate here, we are bound just as much to that tyranny against which so many have fought so vigorously for so many years, and against which they will rebel to the end of time; that we are here, by our acts, not only endorsing, but, perhaps, submitting to that very tyranny, and to that very lash under which we have suffered so long and which we despise so much.

Now, for these few reasons I do hope that we shall be extremely careful how we are carried away by theories apparently so beautiful and so desirable, and lose sight of the practical working of so important a question as this.

MR. PATTON. MR. Chairman: There are three primary forms of government, as you are aware: a monarchy, where the supreme power is vested in one person, called a king, which is said to be the strongest; an aristocracy, where it is vested in a few persons called the nobility, which is said to be the wisest; and a democracy, where it is vested in the mass of the people, which is said to be the purest. The elements of all other forms of government are taken from these. Democratic and republican governments are synonymous, both being governments of the people.

In a populous government, sir, covering a large area like ours, a pure democracy is impracticable, but, next to it, we have adopted a representative democracy, where the people delegate their power to certain agents, called representatives; and the modes adopted for obtaining the collective will and wisdom of the people in selecting them, are by a plurality or a majority of their votes, through the me-



dium of the elective franchise. A plurality is where a candidate is elected by a majority over his highest opposing candidate. A majority is where he receives a majority over the combined vote of all his opposing candidates, as you are well aware, Mr. Chairman, and therefore approximates nearer to a pure democracy than a plurality, because it expresses the will of a larger number of the people, whereas a plurality may express the will of only a third of them; but this minority representation system is an improvement upon both of those modes, and is advancing a step farther in the right direction, because it expresses the representative will of the whole people, and prevents a mere numerical majority from monopolizing nearly all of the offices and the whole machinery of the government. Experience has shown that large partisan representative majorities are more arbitrary and despotic, and more prone to corruption than where party representation is more equally balanced, because, in all deliberate bodies, there are to be found some purely virtuous and fastidiously conscientious men, who will oppose schemes of corruption, and, by this system, neither party can have a large representative majority; and hence conscientious members can and will justly wield the balance of power and thus preserve the integrity and purity of legislation.

Mr. Chairman, allow me to illustrate in a word the practical operation of this improved system of free voting, as I understand it. For instance we will suppose there are two candidates to be elected in an election district containing one thousand voters—that the dominant party has six hundred and the minority four hundred votes—being a majority for the former of two hundred. Each voter is entitled to cast two votes; or, in other words, to cast as many votes as there are candidates to be elected; and may divide them between the two candidates or give them both to one candidate. The dominant party will, of course, nominate and vote for their two candidates; because they know they can elect one of the two candidates, at all events, and have a chance to elect them both. The minority party nominate but one candidate, because they know they can elect him by concentrating their two votes apiece upon him; which will give him a total of eight hundred votes; whereas the dominant party by dividing their votes equal-

ly between their two candidates neither of them can receive more than six hundred votes; and hence the minority party elect their one candidate by two hundred majority, whereas, if they had run two candidates, they could not have elected either of them. Thus we see that by *this* system the minority can be represented as well as the majority; and where there are a large number of candidates to be voted for—say for Presidential electors—the minority party, by concentrating all their votes on a portion of their electoral ticket in accordance with the relative numerical strength of the parties, can thus secure the election of their fair proportion of the electors; but in no case can the minority defeat the will of the majority of the people, where the voters of the dominant party strictly adhere to a party vote; and a minority may be too insignificant to derive any benefit from the system.

Again, sir, suppose the State should elect its quota of congressmen by a general State ticket. On the majority principle, the dominant party, having only one majority in the State, could then elect all of the congressmen; but under *this* improved system of free voting the minority can elect its fair proportion of them. The general ticket system has been tried on the majority plan, and, resulting in a partisan monopoly of all the congressmen, it was, from a sense of common justice, superseded and partially improved upon by adopting the present district system; but this improvement has become a dead letter by the fraudulent gerrymandering process.

In my humble judgment, in order to secure a fair and equitable representation in our State and national Legislatures, the proper and better mode would be to divide the State into double congressional and legislative districts, so as to be enabled to give effect to the minority representation system when adopted, as I hope it will be.

There is another mode, Mr. Chairman, with similar results, indicated by this improved system, which was wisely adopted by the Legislature in providing for our election to this body, in order to invest it, as far as possible, with freedom from party trammels and influences; and for which it deserves the grateful remembrance of the people of the State, which I will very briefly explain in this connection for the benefit of those constituents who have not given it their particular attention. Let us suppose there is a triple election district con-

taining three thousand votes, with *three* candidates to be elected; and the voters are each allowed but two votes. In that case the dominant party can only elect two candidates out of the three, which was the case in our election to this body, and, consequently we find ourselves, politically, nearly equally balanced, there being only five republican majority. Whereas, if we had been elected from the gerrymandered legislative districts without this restriction the majority would have been more than quintupled, and all our measures would, probably, have been shaped by the sinister hand of insidious and irresponsible partisanship. This system would lessen the temptation to gerrymandering election districts, so dishonorably resorted to by the different parties, and by thus encouraging minorities it would call out a fuller attendance at primary meetings, and elicit a stronger expression at the polls; and, moreover, it would make modest merit, instead of brawling sycophancy, a passport to office.

Mr. Chairman, this great improvement upon the elective system has been adopted by the State of Illinois, and works well; and it commends itself so strongly to our sense of justice and equity, that I cannot see why it should not receive the unanimous endorsement of this Convention. In fact, it is the policy of all parties to support it, because, by the fluctuations of parties, the party in power to-day may be in the minority to-morrow, when it would be glad to avail itself of the aid of this system in rescuing it from the retaliatory oppressions of a new party ascendancy. Notwithstanding partisan misrepresentation, the principle of minority representation is popular with the honest masses of all parties; because it comports with the genius and policy of our government, and is eminently just to all and unjust to none.

Mr. MITCHELL. Mr. Chairman: I must add my appeal to the Convention in favor of the principle of minority representation in the Supreme Court. I do not pretend to apply this principle to any other court than the Supreme Court; and I do not think that the principle of minority representation is necessary in the Supreme Court for ordinary occasions and in ordinary times, but I do ask of the gentlemen of this Convention to lift themselves above the ordinary level in the consideration of this question.

The delegate from Delaware asks how can any lawyer look at a question except from

the same point of view as any other legal gentleman; that is, he thinks two lawyers can have but the same view of a legal question. I have listened to the gentleman with a great deal of attention, and I grant that on a pure legal, ordinary question, legal minds do not often disagree, and therefore, I say that the doctrine of minority representation does not apply to the Supreme Court in ordinary occasions. But there are times when the foundations of society are shaken; there are times, extraordinary times, when men feel that rights, as dear to them as life, are trembling in the balance of judicial decision; and in those times when men's hearts are throbbing with anxiety, when they feel that there is something above and beyond all political considerations at stake, I would invoke of this Convention the doctrine of minority representation as applied to the Supreme Court of my State.

I say to every gentleman here that when great questions of constitutional right are to be adjudicated by this court, not now, but in times, as I have said, when the rights of men are coming up for decision before the tribunal—I appeal to the candor of every man here, let him be of whatever shade of opinion he may be, would he not say to me, and would not the majority of this Convention, though differing from me in opinion, say to me, that in those times, when men's rights are trembling in the balance of judicial decision, that every citizen of this Commonwealth should be represented there as far as his peculiar opinions are concerned; and this can only be obtained by minority representation.

I have in my mind, Mr. Chairman, a time when the people of Pennsylvania were looking to the decision of the Supreme Court of this State with terrible and awful feelings. Political considerations vanished. It was then that higher and nobler feelings were at stake; and yet every man in this broad Commonwealth, if he could feel that his shade of opinion was represented there, would have felt safer and better and more tranquil when he was using every possible effort, as became a good citizen of the State of Pennsylvania and of the United States, to sustain the government in its hour of peril.

Now, I state to the members of this Convention that the doctrine of minority representation can do no harm; it can only on occasions of this kind work exceeding great good. The humblest citi-

zen of Pennsylvania has a right to know that in times of great excitement, in times of great peril, when constitutional questions are to be passed upon, his rights will not be infringed upon, and the Supreme Court of Pennsylvania cannot afford to infringe upon the rights of the humblest of the people of this State. How is it if in times of great excitement the feelings of the people are outraged by judicial decision? They will feel that they as citizens of the great Commonwealth of Pennsylvania have been insulted and their rights stricken down. Minority representation, while it may work great good, cannot stop the progress of the great leading constitutional ideas that will come before the Supreme Court, and it may have a healthy effect and prevent them from going too far, from disrupting the ties of society and from striking down by judicial decision what is near and dear to every man.

Mr. WORRELL. 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, there being, on a division, ayes thirty-six, noes nineteen.

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 to the committee of the whole to sit again to-morrow.

Mr. WORRELL. 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.

## NINETY-EIGHTH DAY.

TUESDAY, May 13, 1873.

The Convention met at 10 o'clock A. M.  
The Journal of yesterday's proceedings was read and approved.

## LEAVE OF ABSENCE.

Mr. MINOR asked and obtained leave of absence for Mr. Mantor for a few days from to-day.

Mr. PATTON asked and obtained leave of absence for Mr. Horton for a few days from to-day.

Mr. REYNOLDS asked and obtained leave of absence for Mr. Church for a few days from to-day.

## OFFICIAL REPORTER'S ACCOUNTS.

Mr. HAY. From the committee on Accounts and Expenditures of the Convention, reported the following resolution:

*Resolved*, That a warrant be drawn for the payment to D. F. Murphy, Official Reporter of the Convention, of the sum of \$3,000, to be accounted for by him in the settlement of his accounts as such Reporter.

The resolution was twice read and agreed to.

## THE JUDICIAL SYSTEM.

Mr. MINOR. Mr. President: I move that the Convention resolve itself into committee of the whole on 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, when it last rose, had before it section sixteen of the report of the Committee on the Judiciary. The question before the committee of the whole was upon the amendment of the delegate from Butler (Mr. J. N. Purviance) to the amendment of the delegate from Montgomery (Mr. Corson.) The amendments will be read.

The CLERK read the amendment of Mr. Corson as follows:

To strike out the section and insert: "Whenever two judges are to be chosen for the same term of service, each voter

shall vote for only one; and when three are to be so chosen he shall vote for no more than two; and candidates highest in votes shall be elected."

Also the amendment of Mr. J. N. Purviance, which was to add to the amendment as a proviso:

"*Provided*, This mode of election shall only apply to the election of judges of the Supreme Court."

The CHAIRMAN. The question is upon the proviso.

Mr. MACVEAGH. Mr. Chairman: I feel compelled to state to the committee of the whole—

Mr. WALKER. Will the gentleman from Dauphin yield for a moment?

Mr. MACVEAGH. Certainly.

Mr. WALKER. Before we go on had we not better understand where we are? As I understand, section sixteen is an amendment and not a section—

The CHAIRMAN. The Chair will try to make himself understood by the committee of the whole in explaining this subject. Section sixteen of the present report of the Committee on the Judiciary is before the committee of the whole as a section contained in that report. When that section was read, the delegate from Montgomery (Mr. Corson) offered an amendment to it, to strike out and insert a new section. To that amendment the delegate from Butler (Mr. J. N. Purviance) offered another amendment in the shape of a proviso. The question now is upon the proviso offered by the delegate from Butler.

Mr. WALKER. As I understand the question, that is not correct. When the original report of the Committee on the Judiciary was before this committee of the whole, an amendment was offered by the delegate from the city (Mr. Dallas) to a section of that report, and that amendment is the section that is now before the House. When the article reported by the committee had been progressed with to a certain extent, it was again agreed to reprint the report, correcting it so as to correspond with amendments that had been made in committee of the whole. With

that re-print this amendment offered by the delegate from Philadelphia was also printed. Now, it is, as I understand it, simply an amendment, and not a new section, and that amendment has been proposed to be amended by the delegate from Montgomery. Hence the amendment offered by the delegate from Butler is out of order.

The CHAIRMAN. The Chair will explain that, as a matter of history, perhaps the delegate from Erie is correct. As the section was originally reported from the Committee on the Judiciary, it was the understanding of the Chair that this section as found here, in its exact verbiage, was not in the report.

Mr. MACVEAGH. There was no section on the subject.

The CHAIRMAN. It is the recollection of the Chair that there was general authority given to the chairman of the Committee on that Judiciary to have the article reported by that committee reprinted in accordance with certain amendments which has been made by the committee of the whole. By common consent that report was received by the Convention, and this section was found in this report thus accepted, as section sixteen of the report. Therefore the question now is on the amendment offered by the delegate from Butler to the amendment of the delegate from Montgomery.

Mr. DARLINGTON. Mr. Chairman: I think there is still a misapprehension somewhere. Undoubtedly, this section was not a part of the report of the committee, as it has been disavowed here over and over. When that matter was recommitted to the chairman of the committee, it was to excise those parts which related to the circuit court, that having been decided against, and to report the action of the committee and nobody else's upon the other matters, and how this came to get foisted into the report of the committee has not yet been very clearly developed; but certain it is that this is not a part of the report of the committee. Therefore it can only be here as an amendment proposed by somebody, and that being the case, the amendment of the gentleman from Montgomery is the last amendment that can be offered.

The CHAIRMAN. The Chair has decided this question. When the committee rose on last Friday week, general authority was given to the chairman of the Judiciary Committee to have a reprint, and a subsequent report was made and received

by the Convention, and it has proceeded thus far to the sixteenth section. The question is decided by the Chair.

Mr. BUCKALEW. I beg leave to call the attention of the Chair in addition, to at least one point, and that is that when we took this subject up the last time, at the suggestion of the chairman, and by common consent, the report of the committee was to be taken as the text, as the original report.

Mr. J. N. PURVIANCE. I wish to withdraw the amendment, to the amendment and that will place it beyond question. We can then get at the main question on the amendment offered by the gentleman from Montgomery.

Mr. ARMSTRONG. I desire that there should be no misapprehension on this subject so far as the chairman of the committee is concerned. When this proposition was offered, it was offered as an additional section. I objected to it at the time as not being at its proper place. Of course, it was the right of the party to offer it at any place it may be as an additional section. Then by common consent, for the information of the committee, it was printed where it is. When this reprint was brought into the House by unanimous consent, it was substituted in place of the original report, and thus the question stands.

The CHAIRMAN. The delegate from Dauphin (Mr. MacVeagh) has the floor. The delegate from Butler (Mr. J. N. Purviance) in the meantime has withdrawn his amendment to the amendment of the gentleman from Montgomery.

Mr. MACVEAGH. It may very well be, Mr. Chairman, that it was printed in this form with the general consent of the committee, but it certainly is unfortunate that such consent was given and that so grave a section as this, going, possibly, to the very roots of the success of our work, should, in the words of the delegate from Chester, be *foisted* into a report from a committee to whose consideration it never was presented, and who never said yea or nay upon the matter.

It is here, however, and may be regarded as in all respects properly here, except that it ought not to have been printed as a section as it is. And that being so, while it may be clear that the majority of this committee has made up its mind, as I know many gentlemen think, to incorporate this section into the Constitution which we are to submit, I cannot refrain from expressing my disapproval of

it, and the very sincere and thorough regret with which I shall witness its adoption.

Whatever may be the merits of this method of voting, whatever may be the differences of opinion that existed about it, I am very clearly of opinion that this is not the time to force a decision upon the question. There are those who think that representative government to-day is always too strong, too powerful, and that you want indecision rather than decision. There are those who believe, on the other hand, that if representative government is to exist at all, especially in these days of anarchic movements, it needs more power, more strength of will, more capacity for decision and for action, and therefore they rather prefer to strengthen the hands of those who are to administer the government than to weaken their hands, and it would not be a desirable object in their view to secure a legislative department of the government in which every peculiar opinion should be represented, in which every shade of conflicting opinion should have a spokesman, and from which no clear and definite policy would be possible. On the other hand, they desire to see a majority party in possession of the government and responsible for the government in all its departments of political action and of political selection, and whenever that majority party fails in its duty, then they desire to see it turned out of power and its opponent put in power; but while it is there they desire to see it invested with actual and not with nominal authority, with power to pass its own measures and take the responsibility of them, and not be obliged to go upon its knees to this petty faction and that petty faction, and ask their permission to enact a law or to maintain a policy.

But whatever differences may exist upon the general subject, I implore gentlemen to reconsider the matter whether it is wise for them here and now to take a certain proportion of political power from the majority party of this Commonwealth and give it over to the minority.

It will not do to take the election of this Convention as an example of a wise method of selection. There may be an accidental man here and there who was elected by the people, but the vast majority of us never underwent a popular scrutiny at all. We are the choice simply of the nominating conventions of our respective political parties with an absolute veto

upon the power of the people to say yea or nay. No man in my district had an effective opportunity to say that he did consider me a proper person to represent him after my political Convention said yea; and nobody is here with any better title than I am, possibly with one or two exceptions; and I am not sure even of any exceptions existing.

We are in no sense a representative body of the people of Pennsylvania, and never were, and the people understand that thoroughly. They know that we not only were not elected by them, but that some of us were not even elected by the body itself; that a trap-door is opened and one man goes down and another man comes up and is to assist in framing a fundamental law for the State; and not only have not the people of any township been consulted, but the majority of this body is not consulted. Fourteen or fifteen gentlemen meet together and say, "this man shall go down and the other man shall come up" to frame a fundamental law for the people of Pennsylvania, and the will of that little party caucus is absolute; and you speak as if the people preferred this method of selecting great political officers!

I beg you to believe it is not so, and the results which my friend from Potter (Mr. Mann) thought so lovely and beyond praise, are not at all lovely. Do not forget that there is a great party in Pennsylvania that for a dozen years has administered her government, made her laws, collected her taxes, conducted all the various departments of her public life, and that upon the conduct of that party was put the seal of approval of forty thousand majority when we were elected; and yet what is that party compelled to see? Compelled to see a Convention elected simultaneous with the register of that vast majority after twelve years of service, that not only does not represent her, but represents essentially her life-long antagonist, and she sees herself nominally in a majority of three or four, but over-weighted immensely in the persons of gentlemen of great repute, for length and brilliancy of public service, for the possession of all the elements which go to make up weight in a deliberative assembly. She sees herself everywhere outside of this Convention a giant in the land, having power and not afraid to exercise it, and submitting the methods of its exercise to the judgment of the people over and over again. But in this Conven-

tion she sees herself bound around with fetters of iron, hand and foot, and delivered over to her enemy. She sees in the rolls of your delegates a great Chief Justice, (Mr. Black,) who has served the State in her highest place of power, who advancing through the grades of State service, was called to ampler fields of labor and there came to the step next the throne itself. She sees beside him—

Mr. BOYD. Will the delegate allow me to ask him a question?

Mr. MACVEAGH. Not just now, but in a moment. She sees beside him another eminent member of the opposition whose name is known everywhere throughout the land, who also has served the State elsewhere, who has been a candidate for her highest office here and has sat in her chief seat of justice, [referring to Mr. Woodward.] She sees beside them, as if that were not enough, another gentleman who has served the State long and well for his party; whose ambition was not bounded by the limits of the State, but who was commissioned by his party to serve her on ampler fields of service also, and who comes to us enriched with an experience of six years in the Senate of the United States, [referring to Mr. Buckalew.] And alongside of him, as if he was not enough, a reinforcement has been lately added in the person of another gentleman, who, years ago served this State as her Governor and also served her in the Senate of the United States, [referring to Mr. Bigler,] with honor and credit for six years, and thus on all sides she sees herself confronted with men who in all respects perhaps are the very wisest and ablest leaders of the political organization that is in the minority. All this is done in spite of forty thousand popular majority, and a great politic organization finds itself in a majority technically of three or four, but with the division of opinion that exists always in that majority organization upon cardinal principles, with one man exercising the liberty of private judgment upon this question and another upon that, that nominal majority of three or four means a minority as against an organization that always falls into line and marches to the word of command shoulder to shoulder.

And now what do we see? That this Convention, thus singularly circumstanced, proposes to say to the majority party of Pennsylvania that their forty thousand majority shall count for nothing in the election of two officers to the

bench of the Supreme Court. It is not denied that each party will select adherents of its own organization as candidates. It is not denied that the one party and the other will select men of known political opinions. This Convention has decreed that the judges shall be selected by political machinery, shall be selected by nominating conventions of political parties, shall be chosen amid the excitements of a political canvass. And having decided that much, they propose now to say that an equal political weight shall be given to the votes of the minority as belongs to the votes of the majority. They say that the one party with forty thousand less votes shall have as much political weight in deciding this question as another party with forty thousand more; and they propose to send the work of this Convention before the people of this State with that discrimination upon its face. They have also selected this city of Philadelphia, about whose terrible mal-administration under the control of the majority party, we have been treated to diatribe after diatribe, day after day, since the Convention organized; and by the same experiments the minority in this city is to have precisely the same political weight in a political election that the majority has in this city. I submit, Mr. Chairman, that it is dangerous ground upon which to put this Constitution.

You have a perfect right to say that judges shall be selected by non-partisan methods, and here I will go as far as the farthest. Or you have a perfect right to say, as you have said, that they shall be selected by partisan methods, by political vote. But saying that much, I do not believe that it is wise for you to use the accidental power that the method of selecting this Convention gives you to say that the majority party in this State shall only elect half a ticket and the minority party shall elect the other half of it.

The CHAIRMAN. The Chair is obliged to remind the delegate that his time has expired.

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

The CHAIRMAN. The delegate from Chester moves that the time of the delegate from Dauphin be extended. Are there five objections?

Messrs. CARTER, AINEY, G. W. PALMER, LILLY and LAWRENCE rose.

The CHAIRMAN. There are five objections. The motion to extend the time

of the gentleman from Dauphin is not agreed to.

Mr. CORSON. Mr. Chairman: I should like to modify the amendment I offered by adding after the word "judges" in the first line these words, "of the Supreme Court."

The CHAIRMAN. The amendment will be so modified. The question is on the amendment as modified.

Mr. BARCLAY. Let it be read.

The CLERK. The amendment as modified is to substitute for section sixteen the following:

"Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen he shall vote for no more than two; and candidates highest in vote shall be declared elected."

Mr. MACVEAGH. Has the amendment been modified?

The CHAIRMAN. The amendment has been modified.

Mr. MACVEAGH. In what respect?

Mr. DARLINGTON. The gentleman from Dauphin is now at liberty to proceed with his speech on this amendment, I take it. It is a new proposition altogether.

Mr. BUCKALEW. I submit that the modification has changed the proposition, and the gentleman has the privilege of going on.

Mr. MACVEAGH. I do not care about it.

The CHAIRMAN. While it is a new amendment, it is the same amendment in a different form; and unless the Chair is over-ruled in this respect the delegate from Dauphin will proceed.

Mr. MACVEAGH. I do not desire to proceed against the wishes of the Convention.

Mr. DARLINGTON. I do not think it is against the wishes of the Convention. I move that the gentleman have liberty to proceed.

The CHAIRMAN. A motion is made that the delegate from Dauphin have leave to proceed, which was the question before decided. The chair now decides that the gentlemen from Dauphin has a right to proceed on this amendment if he sees fit to do so.

Mr. MACVEAGH. Then, if it is a right, I do desire to say something further.

The committee will observe—

Mr. BOYD. I move, sir, that the committee rise for the purpose—

The CHAIRMAN. The delegate from Dauphin has the floor.

Mr. MACVEAGH. Then the committee will remember the question now presented is, I submit, of this character: That the new method is restricted by the amendment pending virtually to two cases, to the election of two judges of the Supreme Court and to the election of two judges to the bench of the common pleas of the city of Philadelphia. Of course, every gentleman here understands that that means to take one of each of these judges from the party of the majority and to give it to the party of the minority. Not only is that to be done by a constitutional provision, but it is to be done in a manner that virtually ties the hands of the voters of both political parties, both in the city and in the State. In other words, whoever is nominated by one political party is to be elected, no matter how vast the minority of that party may be; and whoever is nominated by the other political party is necessarily elected, unless, indeed, that happy time comes which somebody has foreseen, when a third party shall appear which shall be stronger than either of the old ones. That is not in much danger of coming this year or next; and therefore the practical working of this proposition is to give a party that cannot carry an election two judges to which, under previous methods, they were not entitled.

Now, is it not serious enough to cause gentlemen to pause and consider before that is attempted to be done? I grant you it is no reason whatever for refusing to incorporate needed reforms in the fundamental law that they will provoke the antagonism of dishonest factions or of dishonest men anywhere; but it is a serious objection to any proposed section that it will array ~~the~~ necessity an overwhelming majority at least of a great political organization, not upon grounds of merit, perhaps, but upon grounds of unjust political discrimination against them. I cannot believe it to be possible that if these tables were turned and the political party that is in the minority were in the majority, it would submit to such discrimination. I can understand the hardship of gentlemen living in minority counties on the one side and on the other of political divisions. I can understand how by looking a long while at the hardships under which they suffer they should desire to grasp at any proposed remedy for the evil, but I gravely question whether any



great political party ever agreed upon any political question or question submitted to political decision akin to a political question, that its votes should count less, man for man, than the votes of its opponents.

We have passed through a great convulsion. We are liable to be engulfed in another. To tell me that at an hour in that great civil struggle when the judiciary, State and national, was drawing to itself the determination of the gravest political questions, when the right of the nation to the services of her children to save herself was brought into judicial decision, when the constitutionality of the draft, when the constitutionality of various measures affecting the preservation of the Government was being discussed before the people and being brought into decision before the tribunal of last resort, rightly or wrongly, and the judges were to be elected in the excitement of a political canvass, that any great political party would agree that its hands should be tied though the people were for the draft or against it, I care not which, that their will should not have effect but that a nominating convention should tie them also on the one side and the other, hand and foot? And where we were but yesterday we may be again to-morrow.

I do submit that it imperils all the good we purpose to do and have been trying to do, to make this discrimination. All men everywhere are not equally intelligent. There are enemies, and will be, against this work in every corner of the Commonwealth. As long as they are required to appeal to base motives, to false statement, very well; but when they marshal the facts that this cause presents, when they give the names of the minority party that shine in this Convention—and I am glad they are here; from the bottom of my soul I rejoice that they are here, that we may learn the good they want to teach us, but that we may repel the evil they bring to the political organization with which we are associated—when the masses of the majority of any party read the great names that have moulded and are to mould the work of this Convention, and recognize in those names their most relentless antagonists, their strongest and most unflinching opponents, men who have met them at every moment of the last decade, and questioned and denied and derided every position they ever assumed, and when they read upon the front of this work, a

declaration that though the majority poll 40,000 more votes in the State than the minority, they shall have no more voice in electing an officer submitted to popular election, I say they will consider that there is an unjust political discrimination; and especially when from the beginning they have read the statements day after day of the condition of the politics of this city, governed, as everybody knows it has been, virtually by the majority party in the State for the last dozen years, and then find that in this city the vote of one man of one party shall not be as effectual as the vote of one man of another party, and the majority shall not govern, but that the majority shall govern half way and the minority shall govern the other half way. I submit they will regard it as unjust—not all of them; for there are no more thoughtful and earnest men in the majority party than those who have given in their adhesion to this principle, who are willing to sustain it here and sustain it away from here. Nevertheless, I submit to them that just now, when the entire experiment has just been disavowed, when a majority Legislature, on the petition of the people, has just repealed every law of the kind, when a majority Governor has just approved the act of the majority Legislature, for this Convention, whose members were only nominated and never elected, to reverse all this at a blow and say: "Your majority Legislature represents the majority party; its repeal we tear into tatters; your majority Governor represents the majority party; his approval we tear into tatters; we decide that you shall have this discrimination."

I say it will lead the thoughtful men everywhere of both political organizations to regard it as an unwise movement, as a movement the reasons for which have not yet sufficiently permeated the public mind to justify its adoption in the fundamental law; and therefore it is that knowing as I do the practical good we can attain, the great evils we can partly remedy, seeing as I do the advantages that may come from a wise limitation of the reformatory work of the Convention, I cannot help but oppose the insertion of this dogma, whether right or wrong. I believe it utterly, fundamentally, radically vicious and wrong, striking at the power of the government and striking at the perpetuity of representative institutions; but still, if I believed it right and wise, I should oppose it with all my

might here and now, because it is such a revolution in all our ideas of political action that it should be more fully discussed, should be more fully tried, should be more certainly recommended to the acceptance of the people before it is incorporated in the fundamental law. Therefore, not questioning the motives of others, but simply looking at the plain facts written all over the history of this Convention, knowing perfectly well that a section of my own organization sympathizes with this movement—I think a small section, though perhaps larger than I imagine—believing as I do that it is calculated to make a distinct political issue, an issue—

Mr. DUNNING. I rise to inquire whether other gentlemen will be allowed to occupy fifteen minutes on this question under the present rule?

The CHAIRMAN. Not except by general consent. No member has spoken that length of time with the consciousness of the Chair. The time of the delegate from Dauphin (Mr. MacVeagh) has expired by one minute.

Mr. MACVEAGH. Then I will withdraw what I have said during the last minute.

Mr. C. A. BLACK. I wish to ask my friend from Dauphin if, under this principle, it is possible for the minority ever to have more than three judges? Can it be that in any contingency the minority will have more than three out of the seven on the Supreme Court bench? I should like to have that explained.

Mr. MACVEAGH. I will explain it. Take for instance the party to which I belong; it is in the majority to-day; it elects one judge. It then passes out of control of the State, and thenceforward two judges are to be elected each year. We then, though in a minority, elect one and you elect one; and in spite of all you cando, the minority party hold the majority of judges.

Mr. C. A. BLACK. But who takes the odd one?

Mr. MACVEAGH. I say he is elected when one party is in the majority, who may afterwards be in the minority for years; and when a question comes up on which the people desire to have their will expressed, they cannot do so.

Mr. C. A. BLACK. The majority must have the odd judgeship.

Mr. BUCKALEW. Mr. Chairman: I rose promptly when the member from Dauphin (Mr. MacVeagh) resumed his seat,

for the purpose of protesting against having any reply made to the remarks which he submitted to the Convention. I believe it is the first speech we have had in five months in precisely that direction.

There is one matter of fact, however, to which I choose to refer. The bill for the Convention, in the form it assumed at the session of 1872, was prepared by you, sir, (General White,) who are now presiding over this committee. The details of it with reference to the manner of electing the members of this Convention were written by you; and the bill was drawn designedly, intentionally, to secure to the then majority of the State a majority of the Convention. That was supposed to be fair, and it was agreed to by all parties in the Legislature. The bill was intentionally so drawn that the Republican majority of the State should have three or five majority in this Convention. It was to be made a certainty, and no complaint was made, or ought to be made now, that the result was obtained. It was intended by both sides in the Legislature. It was supposed to be fair; and why any gentleman should rise and object now to it passes my comprehension. As a question between parties, it was simply this: The majority party in the Legislature agreed to take a certain majority in the Convention though of moderate size, instead of running the risks of popular election and losing control perhaps of this representative body; and it was all very well. They took a certainty instead of an uncertainty. It was a fair and just arrangement; and I insist, sir, that you were right and that your colleagues in the Legislature were right in arranging the bill in that manner and excluding, as has been the fact, politics from the actual election of its members, and, indirectly, the discussion of party matters in this Convention. My mouth has not been opened in a party discourse here, and it will not be.

The Constitution of this Convention is not only right, but it is in accordance with the course of things in other States.

The Republican Legislature of New York recently authorized a commission to be appointed by the Governor to prepare constitutional amendments, and they were to be selected one-half from each of the political parties of the State. That commission met and prepared their report, and it has been printed and published. In the State of New Jersey the majority represented in the Legislature has also

authorized a Constitutional Commission to be appointed in precisely the same manner.

I say to the gentleman from Dauphin that throughout this country from one end of it to the other there is a distinction, and a broad one, drawn between action in the way of amending Constitutions and ordinary political action in Legislatures; and rightly so. And this amendment now before us points in the same direction so far as the courts of the State are concerned; and its effect and the effect of all amendments like it will be to separate our courts more and more from the ordinary rude passions and abuses of party contests.

This plan of election, as far as I remember, was first recommended in recent years by the Union League of the city of Philadelphia in a publication which was well drawn and sagacious, and which doubtless attracted the attention of thinking and reading men throughout the Commonwealth.

But the gentleman from Dauphin has thought proper to compliment certain of his colleagues on this floor for the possession of great ability, prolonged experience, and special capacity for service in this body. As most of the men complimented by him are absent, I suppose as to them, the reference was in good taste, or, to use a more accurate expression, was timely. As to those who are here, of course they will not respond.

But, sir, the gentleman from Dauphin himself might be made the subject of an eulogium of the same description. Is his experience at the bar to go for nothing? Is his experience as chairman of the great political organization in this State in great contests to go for nothing? Is his experience abroad in foreign lands under the authority of the government of the United States to go for nothing? Is his assumed capacity here to lash and to organize the elements of party hatred to go for nothing? If the gentleman will look at himself a moment, he will perceive that his capacity for membership in the Convention, and for interposing in its proceedings, is immensely greater than that of the humble personages to whom he has referred.

But, Mr. Chairman, my main purpose in rising was to say that the amendment as now modified applies the limited vote to the choice of judges of the Supreme Court alone, and, practically, now it will apply simply to the two judges that we have agreed in this article shall be added

to that court. That is the whole scope and effect of it. For one, I shall vote for the amendment in this form, and thus we shall have the question narrowed to what is already in this article, leaving the general discussion of the question of reformed voting to some future occasion. The result of adopting this amendment and of its execution by the people in popular elections, will simply be that the minority in this State will have two judges in the Supreme Court, and the majority five. If anybody objects to that I have nothing to say to him.

MR. DARLINGTON. As I understand, the question now is on the amendment of the gentleman from Montgomery (Mr. Corson.)

MR. BOYD. I rise to a point of order. Has not the gentleman who now has the floor spoken some half a dozen times on this same question?

THE CHAIRMAN. The point of order is not well taken. The delegate from Chester has never before addressed the Chair on this question.

MR. BOYD. We are a little tired of hearing him.

MR. DARLINGTON. I do not think I tire my friend from Montgomery.

MR. BOYD. Yes, you do bore me. [Laughter.]

MR. DARLINGTON. If I am rightly informed, the question now is on the amendment of the gentleman from Montgomery, (Mr. Corson,) and I understand that to be advocated by the gentleman from Columbia (Mr. Buckalew.) He favors that project. If I am right in that, all that I wish to do is to refer to an authority on this subject. I desire to read a passage or two from a book which I hold in my hand for the instruction of the gentleman from Montgomery. It is a book entitled "Buckalew on Proportional Representation." On page eighty I find this doctrine laid down:

"The limited vote (as will be hereafter shown) cannot have extensive application, and it is but a rude contrivance."

Again, on page seventy-four of the same book—

MR. BOYD. I rise to another point of order. Has the gentleman from Chester a right to stand up here and bore us by reading from a book? [Laughter.]

THE CHAIRMAN. The point of order is not well taken; the delegate from Montgomery will resume his seat and the delegate from Chester will proceed with his remarks.

Mr. BOYD. I can stand up if I want to, and I propose to stand up.

Mr. DARLINGTON. At page seventy-four of this same book, which is a very interesting work, I find this:

"It is for this reason that imperfection will always attach to the limited vote as a general plan to be applied to popular elections."

Mr. BOYD. I rise to a point of order. The gentleman from Chester is not speaking from his seat.

The CHAIRMAN. The point of order is well taken. The delegate from Chester will address the Convention from his seat.

Mr. DARLINGTON [after returning to his seat.] I shall be compelled to speak a little louder or the Convention will not be able to hear me from my seat. I read from page seventy-four of the same book:

"It is for this reason that imperfection will always attach to the limited vote as a general plan to be applied to popular elections. The law-maker cannot know that his arbitrary limitation will operate justly and secure his object at some future time. If he could know the exact relative strength of parties in future years, he might apply his limitation to a constituency with confidence."

Mr. BOYD. I rise to a point of order. I say that what the gentleman is now reading is not germane to the question before the House.

The CHAIRMAN. The point of order is not well taken. The delegate from Montgomery will raise no more points of order unless they are more germane to the question. [Laughter.]

Mr. DARLINGTON. Mr. Chairman, I am very sorry that this truth, read from this book of a distinguished member on this floor, so seriously operates upon the corporation of the gentleman from Montgomery.

Mr. BOYD. That is personal to me, sir. [Laughter.]

Mr. DARLINGTON. I only had in view to call the attention of members to this sound reasoning upon the limited vote coming from an excellent source, and which ought to have influence on my friend from Montgomery.

Mr. BUCKALEW. I desire to say a word, as the gentleman read from the publication referred to. The argument contained in that book in several places is that the limited vote is an imperfect contrivance, to elect where a large number

is to be chosen. That argument is not applicable at all to a case where but two are to be chosen.

The CHAIRMAN. Is the committee ready for the question?

Mr. BIDDLE. I should like to hear the amendment read.

The CHAIRMAN. The amendment offered by the delegate from Montgomery, (Mr. Corson,) as a substitute for the section, will be read.

The CLERK read as follows:

"Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only; and when three are to be chosen, he shall vote for no more than two; and candidates highest in vote shall be declared elected."

The amendment was agreed to; there being, on a division: Ayes, forty-eight; noes, thirty-seven.

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

The section as amended was agreed to, there being, on a division: Ayes, forty-nine; noes, thirty-nine.

The CHAIRMAN. The next section will be read.

The CLERK read section seventeen, as follows:

SECTION 17. Should any two or more judges of the Supreme Court 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.

Mr. DARLINGTON. I wish to call the attention of the chairman to the last word. I suppose that to be a misprint. It should read "in accordance therewith."

Mr. ARMSTRONG. That is a mere verbal correction. Let it be made.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section eighteen, as follows:

SECTION 18. The judges of the Supreme 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 un-

der 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.

Mr. ARMSTRONG. I move to amend, in the fourteenth line, by inserting after the word "and" the words, "whose commission shall then expire or who." The purpose of this is merely to perfect the section. As the section now stands, one whose commission expires would not be entitled to the pension. It is to correct a mere omission and perfect the section in that regard. I suppose there will be no objection to this. After this amendment shall have been passed upon, I have one other that I will indicate.

Mr. BIGLER. It appears to me the word "may," in the fourteenth line, should be "shall," so as to read "shall thereupon retire." It seems to involve discretion in the judge now, whether he will retire or not.

Mr. ARMSTRONG. I think the word "shall" would be the correct grammatical expression.

The CHAIRMAN. The pending amendment will be read.

The CLERK. The amendment is to insert after the word "and," in line fourteen, the words "whose commissions shall then expire or who," and in line fourteen, after the word "years," to strike out "shall" and insert "may," so as to read:

"Any judge of any court of record who shall be in commission when this Constitution shall take effect, or who may be thereafter commissioned, and whose commission shall then expire, or who shall have served for twenty continuous years and who shall have attained the age of seventy years, shall thereupon retire," &c.

The amendment was agreed to.

Mr. BARTHOLOMEW. I desire to amend the section, by striking out all after the

word "State," in the seventh line, being the pension provision.

The CHAIRMAN. The delegate from Lycoming, the chairman of the Judiciary Committee, desires to perfect the section.

Mr. BARTHOLOMEW. Then I will withdraw my amendment.

Mr. ARMSTRONG. Not for the purpose of perfecting the expression merely; I will offer this amendment—

Mr. BARTHOLOMEW. I suggest to the gentleman if there is any amendment after the seventh line we had better have this amendment of mine taken first.

Mr. ARMSTRONG. It is before the seventh line. I move to insert after the word "law," in the fourth line, the words, "which for judges of the Supreme Court shall not be less than ten thousand dollars, and for judges of the common pleas shall not be less than six thousand dollars." ["No. No."]

I have been very frequently importuned to ask a vote of the Convention upon this question. I bring it to the attention of the Convention, and am not disposed to press it with any argument unless debate should spring up on it. I desire to have the members express their judgment whether it be wise for the Convention now to fix any minimum salary for judges of the courts, or leave the matter of salary entirely to the Legislature. I introduce the amendment for the purpose merely of bringing the matter to the attention of the Convention that a vote may be had upon it.

Mr. KAINE. I would suggest to the delegate from Lycoming that he had better let that remain until the amendment of the gentleman from Schuylkill is disposed of, because if that should be voted on and carried, no further amendment might be necessary.

Mr. ARMSTRONG. I did not hear the amendment of the gentleman from Schuylkill.

Mr. BARTHOLOMEW. I will propose my amendment at this time.

Mr. ARMSTRONG. Very well, I will withdraw my amendment for the present.

Mr. BARTHOLOMEW. I move to amend the section, by striking out all after the word "State," in the seventh line.

Mr. Chairman, I am opposed to part of the section which I have indicated. I shall vote to strike it out for the reason that I hold it to be the introduction of a principle of compensation for officials of this government that is an exceedingly

dangerous one. I cannot see why this principle, if it shall be once incorporated in the practical operation of our government, should be restricted to the judicial office. I know no reason why the services of a judge should have a higher or more enlarged consideration than those of any other officer of the government faithfully discharging his duties. In the past, certainly, we have had no occasion for it. In the past we have been served faithfully and well in the judicial offices of the Commonwealth without this additional incentive or emolument. We have not lacked for candidates to fill these positions.

On the contrary, every convention that has nominated candidates for common pleas judgeships has had plenty of applicants for these high and honorable positions. Every State Convention of either party has had an array of names presented to them, anxious and willing to serve their country in the discharge of the duties of their office of Supreme Court judge. It strikes me that this section is a concession that the pay of the judge for the time that he is fitted for duty and for service is inadequate, and therefore unjust. Now the proposition which strikes my mind is that it is the true principle to pay the judge whilst he is discharging his duties, well and amply, but not to pay him after he is unfitted to give to the government the services that his office requires of him. If the section as it now stands contains the true principle, it will soon be enlarged and added to. Every officer who has discharged the duties of an official position for any length of time, until age and infirmity have rendered him unfit to pursue the ordinary avocations of life, will claim that he too is entitled to his pension, and we shall have an army of pensioners fastened on the government, eating and consuming the taxes of the people.

Now, I take it that the office of judge is fairly paid. Perhaps the pay is now too little, but let it be ample, let it be sufficient. There are certainly men now in official position in the different departments of the government who are doing work as laborious, and which requires the exercise of as great mental and physical capacity as that of any judge, and for much less compensation; yet never heretofore has a voice been raised to ask for a pension for them.

Gentlemen, we must take into consideration in the discussion of this question a fact which should be realized by every member of this body. Whilst no man

upon this floor is more willing than I am to pay well every official who serves the government, to pay him generously, I am not in favor of a proposition that entails upon the tax-payers of the Commonwealth so great an expense as this. The very proposition in itself contains sufficient to array antagonism against our Constitution. It has in it that which must necessarily entail an enormous additional expense to the State. The judicial position is one which is rarely ever filled until men attain a considerable age, and the time at which their services will expire would soon arrive, and then they would become no longer of service, but only the mere pensioners of the government.

I take it that a man who assumes to discharge the official position of a judge does so with the compensation of his office, fair and right and reasonable, fixed and definitely ascertained. That should be ample and sufficient for him to rest upon. Therefore I take it that it would be an act which would array antagonism against this Constitution if we here undertake to entail so great an expense upon the treasury of the Commonwealth of Pennsylvania. The principle, if it is to be a principle at all, should be general, applicable to all officials and not to these alone. There is no good reason for that. It has been a proposition that has often struck my mind that if this principle should ever have an application, it should be to the high office of President of the United States. Yet our national council in its wisdom has failed to make such a proposition for a constitutional provision which would allow the President of the United States to receive anything like a pension. It has happened in the history of our country that men who have attained the age of forty or forty-two years have been elected President of the United States; they have discharged the duties of their office; they have been men without means, and have been compelled to retire from that office and pursue that vocation in life which they had chosen prior to their elevation to that high position; and I do think that it is rather a humiliating spectacle to see one who has held the high office of President of the United States pleading a case of assault and battery in a quarter sessions court. Yet that has been done from necessity. It is on the great principle that we are all equal, that the people of the United States stand equal, that every man who is elevated to position serves the people; is not their ruler because they have elevated

him, and when he has discharged the duties of his office, he goes into the ranks of the people and stands again as one of them.

For these reasons I shall support this amendment which I have offered, and I ask for it the serious and candid consideration of delegates upon this floor.

Mr. ARMSTRONG. Mr. Chairman: The Committee on the Judiciary in introducing this section were influenced by the belief that they were devising a mode not only of doing great justice to a deserving class of our fellow-citizens, than whom none are more so, but at the same time increasing the probability that we should thereby improve the judiciary of the State. The income of the State of Pennsylvania is now about eighteen millions of dollars. The expense of the judicial system is comparatively small, and this State is as well able to do generously by her judges as any State in the Union. The public sentiment which surrounds the judges forbids that they should engage in any active business pursuit. No matter what may be their circumstances, or with what fidelity they discharge their duties, or to what extent they may have been engaged in any other business, the sentiment exists in the community that they shall not pursue any other business whatever with a view of making money. Public sentiment frowns down upon that. When we have taken a judge, no matter whether it be with his own consent or not, we desire that his office shall be made more inviting and so command the highest talent of the State. When we have taken these persons, and pledged them about and assigned them to official duties, for a long term, or during the active period of their lives, we leave them and their families, in very many instances, wholly dependent when their term of office expires. The means of amassing any large amount of money is taken from them. They can barely live, and when they die they leave a helpless, dependent family. I think this is wrong. I think it appeals to the generosity of the State and appeals as well to our selfish interests to correct this practice, for we shall get better men if we make the place more desirable. No judge, under this section, would get a retiring salary unless he had attained the age of seventy-eight years, and there are but a few who would become pensioners on the State under such a pension. I do not like the term "pensioners," because it does not accurately express the idea

which underlies this proposition. It should be a part of a stipulated contract and not a pension. Judges should know when they go upon the bench that it is a part of their contract with the State that they shall receive so much during the term of their service and so much while they live, if they shall retire from the bench at the age of seventy-eight.

Mr. BEEBE. Will the chairman of the Committee on the Judiciary allow himself to be interrogated?

Mr. ARMSTRONG. Yes, sir.

Mr. BEEBE. While I agree with the principle contained in the section which the gentleman advocates, I wish to ask him if it is not more properly a subject of legislation, and belonging therefore to the Legislature?

Mr. ARMSTRONG. I have no doubt that it is competent for the Legislature to do it, but I do not think it has been the rule in this Convention to draw the line indicated between the powers of the Legislature and the powers of this Convention with any very great nicety. I think that this is a very proper change, and we ought to make it, notwithstanding the fact that the Legislature might provide for the same thing. This gives stability to it, introduces it into the Constitution, and therefore makes the compensation of judges more certain, more definite, and incapable of change to that extent.

Mr. BEEBE. I merely made the remark, because it is the opinion of many members of the Convention that the subject more properly belongs to the Legislature.

Mr. ARMSTRONG. I will not further discuss that, because I do not desire to trouble the Convention with any extended remarks upon this proposition, which is very simple, and one which every gentleman understands.

Mr. CURTIN. Mr. Chairman: I always speak to this Convention with great reluctance. Often before I come to the Hall in the morning I think, when I look over the questions likely to be before the body, that I shall trouble it with some remarks; but when I come here I find all that I intended to say so much better said than I could say it, and find so much more said upon the question than I had thought of, that I generally hold my peace.

On this question I have made up my mind deliberately to vote for the amendment of the delegate from Schuylkill (Mr. Bartholomew.) On first consideration I thought it was better that we should pension the judges; but when I

came to reflect upon it, I decided not to favor the proposition. It is contrary to all our settled policy, to our history, and to our traditions, to pension any man except one who has been in the military service in defence of the country. When we also reflect on the fact that if we pension judges the system will run on indefinitely, and we shall have Governors and Auditors General and State Treasurers and Secretaries of the Commonwealth to pension in the course of a few years, we must see the impolicy of this provision. It is not hard for the Legislature to say that such men have served so long and so faithfully, that they have given their time so exclusively to the public service to the detriment of their private affairs that they should not be turned out on the common in their old age; and with this extension of the system of pensions, your treasury will be depleted. I have sincere compassion for the man who, having assumed judicial authority, spent his life upon the bench, and performed his duty, being, as has been said by the chairman of the Committee on the Judiciary, specially cut off from any of the ordinary employments of life, is at last turned out at an advanced age in poverty. But, Mr. Chairman, it is one of the incidents of our form of government, resulting from the application of the limited tenure to all official stations and the receipt of a fixed salary. I am perfectly willing to give the judges a reasonable and just, nay a liberal, compensation; but on full consideration I am not prepared to vote for the introduction of the pensioning of officers in the civil service.

Mr. Chairman, I have great confidence in the deliberations of this body, and I think they will dispose of this question as they have of all others, very justly; that they will go to the bottom of every principle attempted to be introduced in the way of reform into our Constitution, and my impression has always been that this enlightened body has attracted to it a very large measure of public confidence, and I really cannot see what great difference it can be how we got here, for our work has to go before a higher and more august tribunal than this Convention itself. We must submit our amendments to the consideration of the people, and they will approve or reject the action of this body.

It is six months yesterday, Mr. Chairman, since our session began. I hope we shall not sit six months longer. I think

we ought to dispose of the remnant of our duties in two months, get to our homes before the summer solstice, and submit our amendments to the consideration of the people early in the autumn. Having been for some time and on many occasions connected with the political organizations of the State, and sometimes the candidate of a party, so far from objecting to the allusion to me by the eloquent gentleman from Dauphin or to the infusion of politics into this Convention, I feel much refreshed that after six months we are treated to at least one political speech.

Mr. MACVEAGH. The gentleman will allow me to say that he appropriated an allusion intended for somebody else. I did not allude to him at all.

Mr. CURTIN. I beg the pardon, then, of the gentleman from Dauphin. I thought he alluded to me. I am very sorry. I know my friend only alluded to me, if at all, in perfect kindness, and my remark was intended in that way.

Mr. MACVEAGH. Certainly; I know that; but I did not, in point of fact, allude to the gentleman.

Mr. STEWART. Mr. Chairman: The section reported by the Judiciary Committee meets my unqualified approval, and I supposed, until I heard the remarks of the gentleman who has just spoken, that the section commended itself to members of the Convention generally as well as to myself. The objections urged by the gentleman from Schuylkill and the gentleman from Centre occurred to me, and I think I gave them as close consideration as they were entitled to, and I say I do not think they ought to influence the action of this Convention.

The importance of an honest, upright, independent and able judiciary cannot be magnified. The people of Pennsylvania understand this, and if there is any one thing that they desire more than another it is a judiciary of this character. In order to secure a judiciary of this character, they are willing to resort to whatever means may be necessary. It may be expensive; they are willing to incur the expense. It may entail upon them increased taxation; they are willing to bear it. For, sir, they know that the glory of the State and the security of the rights of the people are dependent upon a judiciary of this character.

Now, sir, the chief objection that has been urged by the gentleman from Schuylkill is the fact that this system is expen-



sive, and will entail upon the people a burden of taxation. It is hardly worth while to inquire to what extent that is true. I observe that by the provisions of the section nobody will be entitled to this annuity unless he shall have attained the age of seventy years, or shall have served twenty years upon the bench. It is apparent that the body of men who will be benefited by this will be numerically very small indeed. But, says the gentleman, let us pay the judiciary, pay them liberally, pay them amply. He says we have not suffered from the want of this in the past. That is true. The State of Pennsylvania has been fortunate in her judiciary. She has secured the services of men who by their virtues have supplied the defects in her system. She has had men upon her bench who have been above the arts and above the attractions of political life. So much the greater their honor; so much the greater our shame that we have failed to compensate these men in the manner in which we should have done.

The proposition of the gentleman will fail of its object. Increase the salary, increase the compensation, and you make it inviting to the ambition of men who should not aspire to the bench.

I understand what the settled policy of the Commonwealth has been. The gentleman has referred to it. It is a policy which, in my judgment, is "more honored in the breach than the observance." We ask men to leave lucrative practices, we ask them to abandon those fields of pursuit in which their labors have been well rewarded, and take a seat upon the bench, for what? For a mere subsistence. And then, after continuous years of hard labor given to the State, they are turned aside—for what? Their advanced years prevent their entering upon that field again. They are unable to compete, they are unable to go into the active conflicts of life, and they are left upon the residuum of a scanty allowance which we gave them while they served us.

Now, sir, I say rather than increase their salary, rather than make that tempting and inviting to men who should not aspire to a seat upon the bench, let them feel secure in this, that after they have labored earnestly and honestly for the Commonwealth, the Commonwealth will not turn them loose upon the charities of a cold world.

For these reasons, Mr. Chairman, I shall support this proposition as it comes from

the committee. I believe it is right; I believe it is nothing more than fair, and I believe it will tend to secure to us the character and independence which we desire in the judiciary of the Commonwealth.

Mr. CORSON. Mr. Chairman, there is a slight amendment which I should like to make here: To add after the words "commissioned and," in the thirteenth line, the words "any member of this Convention," so that it will read: "and any member of this Convention who shall have served for twenty continuous years and shall have attained the age of seventy," &c. [Laughter.] I withdraw it for the present.

Mr. DARLINGTON. Mr. Chairman, I have very little to say and will not detain the committee many minutes. I am in favor of the proposition of the gentleman from Schuylkill and I am against the system of pensioning judges; and I will give my reasons for this opinion very briefly:

A civil pension system is against the genius of our institutions. It has never been considered by the people of Pennsylvania as at all admissible, for the reason in part that no man is bound to accept office. Every man who accepts office, no matter what it is, does it of his own free will. He knows that he will receive the ordinary emoluments during the time he shall exercise the duties of the office, and he knows equally well that at the expiration of that time he may be allowed to retire. No man is bound to accept, and therefore there is no propriety in adding, after a man ceases to perform the service, anything by way of remuneration for that which he is not able to perform.

For what is the salary given? It is as a just compensation for the services rendered and nothing else. Make it liberal, as gentlemen say; I am willing to go as far as any; make it a liberal salary. If the term is fifteen years or twenty years let him enjoy it for that time, if so long the officer shall be able to discharge the duties; but when he ceases to be able to render service to the government, why should the judge be pensioned any more than the Governor? Why should there be one class of officers selected who are called upon to perform public service for their country, and who may choose to accept office, in preference to another?

Mr. STEWART. Will the gentleman allow me to interrupt him?

Mr. DARLINGTON. Certainly.

Mr. STEWART. Is there any other official in the government whose term of service is so long?

Mr. DARLINGTON. Certainly not.

Mr. STEWART. I submit that that is a sufficient reason why this class should be allowed a pension.

Mr. DARLINGTON. What then? Because the term of office is longer than any other and he can enjoy the emoluments of the office longer than any other man in any other station, what reason does that afford for continuing them afterwards? There is nothing to preclude a judge, when he goes off the bench, engaging in the pursuits of private life, nothing to prevent his going to the bar and working; he is all the better for working. There is nothing to prevent him, as our judges of the Supreme Court do, going into service again; and so do our judges of the common pleas. There is nothing in the way. Why, then, should we add a pension to the fees which he will get when he goes from the bench and resumes work at the bar? When we have ceased to require the services of a public servant and he chooses to retire after a certain number of years and go again into active private employment, why should the public pay him when he is at liberty to work and does work for his reward? I oppose this as to every officer in the government, save only the man who has periled his life upon the battle-field. There I would allow a pension. If men lose their health, their limbs, their life, I would pension them or their helpless families, because they have rendered services which are for the benefit of all of us, very different from civil service. We might just as well pension any other officer as a judge.

I merely wished to state my reasons in brief for supporting this amendment.

The CHAIRMAN. The question is on the amendment of the delegate from Schuylkill (Mr. Bartholomew.)

The amendment was agreed to, there being on a division, ayes fifty-four; noes twenty-five.

Mr. LITTLETON. I move an amendment, in the fourth line, after the word "compensation," to insert "from the State;" and in line five, after the word "no," to insert "other compensation for their services from any other source, nor any," so as to read:

"The judges of the Supreme 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 from the State, to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no other compensation for their services from any other source, nor any fees or perquisites of office, nor hold any other office of profit under this Commonwealth, nor under the United States or any other State."

So much of the section reported by the committee as now remains for the action of the committee of the whole is in the precise terms, I believe, of the provision of the present Constitution. Since that Constitution was adopted at least one law has been passed which compels one county in the State to contribute a very large sum annually for the support of the judiciary appointed to administer the laws in that locality.

If it is the intention of the Convention to vest a discretion in the Legislature to charge the expense of the judiciary of any one particular county, or the counties generally, upon the counties respectively, I have no objection to it; but I do think the principle ought to be fixed one way or the other, that either the State should pay all the judges of each county or all the counties should contribute for their particular judges.

Mr. CORBETT. I wish to call the gentleman's attention to the fact that we have provided for a local judiciary in Philadelphia, who are required to be learned in the law, and we have provided that they shall be paid by the city or county of Philadelphia. Now, if we insert these words, which are general, they would include that judiciary.

Mr. LITTLETON. I am glad the gentleman has made that suggestion, because we can except that particular class of judges from this provision. The old Constitution leaves us subject to an annual charge, which is simply a burden upon us, because the city of Philadelphia contributes its fair quota of State taxes, and there is no more reason why that county should support its judiciary than the county of Montgomery or any other county in the State should support its judiciary.

Mr. EWING. Will the gentleman allow me?

Mr. LITTLETON. Certainly.

Mr. EWING. I ask the gentleman from Philadelphia if he has ever read the act which gives authority to the city of Philadelphia to pay an extra compensation to its judges?

Mr. LITTLETON. I have.

Mr. EWING. Does it not include the county of Allegheny?

Mr. LITTLETON. I think it does not.

Mr. EWING. I think it does.

Mr. LITTLETON. If it does include the county of Allegheny, it is simply an extension of the injustice.

Now I desire to say, for the information of the committee, that that particular act of Assembly is hidden away in an annual appropriation bill, snugly placed there so that the then Governor could not, if he had chosen, without calling an extra session of the Legislature, have vetoed that bill. I think that improper legislation having occurred, it is our duty, knowing that fact, in fixing this section, to make it positive one way or the other. Let the State pay all the judges, or let each county take care of its own judges; we are willing to abide by that conclusion if the Convention says that shall be done; but after having paid our share towards the support of the judiciary generally throughout the State, I do not think it is right that there should be charged upon us additionally a large sum of money per annum as an extra compensation for the officers of the State.

Why, sir, you might just as well say that we should pay an additional contribution towards the salary of the Governor, or that we should pay additional compensation to the salaries of the judges in Montgomery county, because they may happen to try some case that concerns Philadelphia. I simply appeal to the committee on the question of the injustice of the Legislature that exists, and ask that the matter may be fixed here so that there may be no misunderstanding of it hereafter.

I regret as much as any one to be compelled to do anything that may affect the emoluments of the present judges of the courts of Philadelphia; I think they are underpaid; but whatever their compensation may be, I think it should come from the government which employs them. They administer the laws of the State. They are not officers of the city of Philadelphia.

Nor should the judges, the officers of the State, be dependent upon any corporation for any portion of their compensation, especially such a corporation as the city of Philadelphia, which probably has a greater number of suits in these courts than any other single suitor. It does seem to me to be an anomaly in legisla-

tion, certainly in constitutional legislation, to make the judiciary partially dependent upon a corporation which daily invokes the administration of the laws in its behalf.

If the Legislature can compel a municipal corporation to subscribe a certain quota towards the compensation of the judiciary, why may they not compel any other corporation to do so? Certainly, they could compel any other county to do so. The legislation of the State is covered all over with this injustice; and I think we ought to prescribe here, in language so certain as not to be capable of misconstruction, if we mean to have any such prescription at all, that no Legislature hereafter shall be able to do such a thing, and that the improper acts in the past should by this means be repealed.

Mr. MANN. I wish to say, in answer to some portion of the remarks of the gentleman who has just taken his seat, that the act of Assembly to which he refers is not so unjust as he would give the committee to understand. The State has always paid the judges of Philadelphia a larger salary than it has paid the other judges of the Commonwealth out of the State treasury; but the profession in Philadelphia were not satisfied with that salary, and they demanded of the Legislature authority to pay the judges an additional salary out of the treasury of the city. The act was passed from no disposition to do injustice to Philadelphia, but in response to the demand of citizens of Philadelphia, that they should have the privilege of paying their judges an additional salary.

Mr. LITTLETON. Permit me to ask the gentleman, was any such demand ever made by the authorities of Philadelphia who must collect this money by taxation?

Mr. MANN. I will not undertake to answer that question; but I will say that large numbers of very respectable gentlemen of Philadelphia came to the Legislature and said it was the demand of Philadelphia. I could name an authority that I think would satisfy the gentleman; but I do not like to bring in the names of particular citizens of Philadelphia on a question of this kind. At the time that section was passed I was a member of the House Committee of Ways and Means, and I was upon the committee of conference, and I resisted the application, partly from the feeling to which the gentleman refers; but it was said, "this is purely a demand of Philadelphia for the right to

pay their judges a larger salary than you are willing to pay the judges of the State;" and it was put in the appropriation bill for that reason, and no other. The judges of Philadelphia were already paid out of the State treasury a larger salary than the other judges of the State at that time. The argument of the gentleman from Philadelphia, therefore, is without a foundation.

Mr. ARMSTRONG. I trust this amendment will not be adopted. It seems to me to be unnecessary. The State at large now does pay all her judges, those in Philadelphia in common with all the other judges of the State, and pays the latter more liberally than any others; but the Legislature has simply authorized the the city of Philadelphia to pay the judges here something additional to the salary they get from the State, out of the city funds, if it chooses to do so. If the city does not wish to do it, it can withdraw it at any time.

Mr. LITTLETON. It is a positive direction by act of Assembly, and therefore compulsory.

Mr. ARMSTRONG. It is entirely within the control of Philadelphia. They can correct it at any moment they please. I think there is no necessity for the amendment, and the section ought to stand as it is.

Mr. J. PRICE WETHERILL. I desire to say but a word on this subject. It is true, as stated by my colleague from Philadelphia, (Mr. Littleton,) that by act of Assembly we are compelled to pay out of the city treasury \$2,000 each, per annum, to ten judges, making an appropriation of \$20,000, which the State ought to pay. Not satisfied with that, a demand was made last winter, not by the bar of Philadelphia, but probably by some irresponsible persons for their own private ends, that that pay should be increased from \$2,000 to \$5,000 a year, which would have made the annual amount paid by the city to the ten judges of Philadelphia, which the State should pay, \$50,000 instead of \$20,000.

Is there any justice in this? The city of Philadelphia has suits before these very courts. It demands justice before these very courts. It may have doubtful questions to come before these very judges, men whom it pays. Just think of it! The city asks justice of men whose salaries it pays! The very statement of the fact ought to induce the adoption of some such proposition as this in the Constitution.

The idea of my going into a court and demanding justice when I know very well that I pay the judge who is to decide my cause \$2,000 a year! Let there be a doubtful question, and in whose benefit will the doubt be decided? Certainly, no matter how pure the judge may be, (for after all he is but poor human nature,) he will yield to the man who pays him the money.

Mr. J. W. F. WHITE. Will the gentleman permit me to ask him a question?

Mr. J. PRICE WETHERILL. Certainly.

Mr. J. W. F. WHITE. I desire to ask whether you had not the opinion of the city solicitor some years ago that such an act of Assembly was unconstitutional, and that you were not required to pay that extra salary to the judges?

Mr. J. PRICE WETHERILL. Of course, being a layman, the gentleman, by asking me a professional question, has me at a disadvantage. I only know what has been done for years, and what we have been compelled by act of Assembly to submit to; and I know that it has been so grateful to some parties in interest in the city of Philadelphia that their desire has been to increase that appropriation by act of Assembly, and make us pay each of the judges \$5,000 instead of \$2,000 additional.

Mr. J. W. F. WHITE. With the gentleman's permission, I think he misapprehended my question. It was whether the city solicitor did not give a written opinion to councils that the act of Assembly was unconstitutional, and that the city councils were not bound to pay that extra compensation.

Mr. J. PRICE WETHERILL. I cannot answer the question of the gentleman. I only know that the amount has been regularly paid, and that the judges, whether constitutional or otherwise, took the money, and that if the act of Assembly had been passed increasing the pay to \$5,000, the city treasury would have been the loser to the amount of \$50,000 per annum.

Now, sir, we have an opportunity here to settle this matter. There is certainly justice in the amendment. I think I have made clear to the members of this Convention the utter folly of a man expecting fair play, when, on the other side, the party opposing him, pays a part of the salary of the judge. There is certainly reason and common sense in that argument; and for that reason I hope the amendment of my colleague will prevail.

Mr. ARMSTRONG. A single word. I suppose no one doubts that it is wholly incompetent for the Legislature to impose such a duty upon any county. If they pay this additional compensation it is a voluntary payment which they can avoid at any time they please.

Mr. LITTLETON. Will the gentleman permit me to ask him a question?

Mr. ARMSTRONG. Yes, sir.

Mr. LITTLETON. Was it not provided in the old section of the Constitution that so far as the State was concerned in the administration of justice it should not be permitted?

Mr. ARMSTRONG. I think not. If Philadelphia chooses to decline to pay her judges the additional salary she can do so, and the State will pay them that which it thinks is just and fair. The only effect of the amendment would be to withdraw from the judges of Philadelphia that portion of their salary which they now get from the city, and which they certainly never would get from the State. I think the section is right as it is.

Mr. LILLY. I do not want the Convention to lose sight of one thing in voting on this amendment of the gentleman from Philadelphia, and that is that it will require the State to pay the twenty odd police judges of Philadelphia. We have provided that they shall be learned in the law, and under this amendment offered by the gentleman from Philadelphia to my left, we make the State pay them. You might just as well ask to pay the justices of the peace in every county throughout the State out of the State Treasury as to pay these twenty-one or more police justices of Philadelphia. They are to be learned in the law, and, under the language of this amendment, they must be paid by the State. Certainly the Convention will not vote for any such thing.

Mr. LITTLETON. I desire to modify my amendment to obviate the objection raised by the gentleman from Carbon. I think the objection is a valid one. After the word "law," in the third line, I propose to insert the words "except justices of the police courts established for the city of Philadelphia."

Mr. CORBETT. Will the gentleman allow me to suggest to him to strike out the words "all other judges required to be learned in the law," so as to make the section apply only to the judges of the Supreme Court and courts of common pleas?

Mr. LITTLETON. I will make that amendment. I think that is still better.

The CHAIRMAN. Will the delegate repeat his amendment? It is not understood at the desk.

Mr. LITTLETON. It is in line two, after the words "common pleas," to strike out the words "and all other judges required to be learned in the law."

Mr. DARLINGTON. I do not see why the proposition of the gentleman from Philadelphia should not be adopted. It seems to me to commend itself to the judgment of everybody as intrinsically just. Why should not the State supply the judiciary to every portion of it, according to its needs, and pay them out of the treasury? It may be said that in the city of Philadelphia and in Allegheny county there are heavier duties imposed upon the judges. That only shows us that there should be more judges, more judicial force supplied; and furthermore, we may expect from the city of Philadelphia and the county of Allegheny a greater share of taxes towards the public burdens. I do not see that it is wrong to pay them out of the treasury entirely, as many as are needed for Philadelphia, as many as are needed for Allegheny, and as many as are needed for any other portion of the State.

It is suggested that the cost of living is greater in these cities. The trouble is not so much that as it is the inclination to live. A man can live in Philadelphia about as cheaply as he can in West Chester if he will be as moderate in his demands, and I presume he can live in Allegheny as cheaply as he can in West Chester. Produce is cheaper there; coal is cheaper; everything is cheaper. We pay higher for coal in West Chester than they do in Allegheny or Philadelphia. Everything that we raise in our gardens as vegetables can be raised as cheaply there as anywhere, and can be as cheaply bought in Philadelphia as anywhere. It is a mistake to suppose that there is any necessity for living more expensively in Philadelphia than anywhere else, save only in the item of house rent; and if you take a moderate house, as most of us in West Chester are obliged to live in, you can live as cheaply in that respect here as elsewhere.

However, if it be necessary to give a larger salary to a judge in Philadelphia or in Allegheny to secure his services, let it be done by the State. Do not place the judge in either place under the in-

fluence of a local payment, which might be suspected by a suitor to warp his judgment in cases like those which you are now moving from Philadelphia to Delaware county in order to get before an honest judge and an honest jury; I mean those cases of the Schuylkill navigation boatmen against the city of Philadelphia. The judges here cannot be trusted to try them, and therefore it is proposed to remove them to Delaware county.

Mr. ARMSTRONG. I think the purpose of this section is perhaps misapprehended. Its whole scope and intention is to cut off all judges learned in the law from receiving compensation by means of fees. The purpose is to compel them to be paid by fixed salaries. Now the object the gentleman from Philadelphia has in view is fair enough in one regard; it is to say that all judges should be paid by the State. So they ought, but the effect of it would be, if his amendment should pass, that the Legislature would simply reduce the compensation of the Philadelphia judges. We do not want that.

Mr. FELL. He says he does want that.

Mr. ARMSTRONG. I do not know whether he does or not.

Mr. LITTLETON. I certainly do not wish the State to reduce the compensation of the judges of Philadelphia. I want them to increase it; but I do not want them to do it in an unjust way.

Mr. ARMSTRONG. What I wish to guard the committee against here is striking out that part of the section which will prevent judges learned in the law being compensated by the system of fees, which is an obnoxious and injurious system at all times, and which this section is intended to guard against. If the amendment prevails to strike out the words "and all other judges required to be learned in the law," it would leave it stand as to the common pleas judges and cut off the orphans' court judges, who will doubtless be required in some parts of the State at least. I do not see any value in the amendment.

Mr. LITTLETON. I desire to perfect this amendment so that it may be voted on understandingly. I have no desire to cause such a result as that mentioned by the gentleman from Lycoming, and I will modify the amendment, if I may be permitted to do it, in any way that will place it in such a position that the committee can vote properly on it.

Mr. ARMSTRONG. Would it be satisfactory to insert after the word "law" the

words "and paid by the State," without any further amendment? That would not apply to the police courts.

Mr. LITTLETON. Still there should be an exception of the judges established for the police courts in Philadelphia. I now withdraw, with the permission of the committee, the last modification, and propose to insert, in line three, "except judges of police courts established for the city of Philadelphia."

Mr. ARMSTRONG. Allow me to suggest this language: "shall be paid by the State, except as herein otherwise provided." That will make it right.

Mr. HAZZARD. I hope the amendment will be so fixed that the judges of the peanut courts we have set up in Philadelphia shall not be paid by the State. The lawyers in this Convention have cunningly contrived to get rid of the poorer lawyers in Philadelphia by establishing these little one hundred dollar peanut courts that they may shove them into these places and keep the road clear.

The CHAIRMAN. The amendment will be read.

The CLERK. The amendment is to insert after the word "law," in the fourth line, the words "and paid by the State, except the judges of courts not of record." The section will then read:

"The judges of the Supreme 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 and paid by the State, except the judges of courts not of record, which shall not be diminished during their continuance in office," &c.

Mr. ARMSTRONG. I have no objection to that amendment.

Mr. DARLINGTON. I suggest that the word "State" be changed to "Commonwealth."

Mr. LITTLETON. I have no objection.

Mr. J. N. PURVIANCE. I notice that the language of the section is pretty much the language of the present Constitution, though not exactly, and as I can see no reason for a variance therefrom, I offer as an amendment the following:

"The judges of the Supreme Court and the presidents of the several courts of common pleas shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no

fees or perquisites of office, nor hold any other office of profit under this Commonwealth, or under the government of the United States, or any other State of this Union."

I offer that as a substitute.

The CHAIRMAN. The Chair cannot receive the amendment offered by the delegate from Butler. An amendment is already pending, and the Chair cannot catch whether that is an amendment to it or not.

Mr. J. N. PURVIANCE. I will withdraw it for the present.

The CHAIRMAN. The question is on the amendment of the delegate from Philadelphia.

Mr. GIBSON. Mr. Chairman: Before the vote is taken on this question, I should like to call the attention of the committee to a provision in the seventh section, page 3, which has already been adopted: "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." Here is a source of revenue that does not come from the taxation of the people or the ordinary sources of revenue that supply the city treasury. If so, I should like to ascertain from some of the gentlemen from Philadelphia, the relative proportion these fees would bear to the extra salaries that are paid to the judges. If they bear any proportion to each other, then the objection is answered that there is any discrimination, that there is any objection on the part of the judges in the corporation trying cases therein. I simply call the attention of the committee to this; and I think it will answer—

Mr. LITTLETON. The money arising from those fees is intended, of course, to sustain the local courts, for which you have established police justices learned in the law, and to whom a compensation much higher than the ordinary profits that an alderman or justice of the peace now receives would be paid. Therefore, the other section provides that the city itself shall pay the salaries of these local justices, and the fund to provide the means for that payment is to come from the fines and penalties which these justices impose and collect. Therefore, it has no relation whatever to this subject. If the State will pay the salaries of these local justices, I, for one, as a representative from the city, should be perfectly satisfied to let the State take the fees.

Mr. TEMPLE. What becomes of the fees that are paid into the city treasurer's office from the prothonotary's office? That is what the gentleman from York referred to.

Mr. GIBSON. Certainly. Section fourteen, relating to justices of the peace and aldermen, concludes:

"All costs in criminal cases 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."

That is one fund; but what I referred to was the provision in section seven, "all fees collected in said office"—that is, the prothonotary's office—"shall be paid by such prothonotary into the city treasury." That is certainly a very large fund.

Mr. LITTLETON. I have only to say that if there is in any section that has been adopted a provision that gives the city of Philadelphia an unfair advantage over any other portion of the State, that ought to be corrected, but not by an act of injustice. Place things on their proper basis and let us legislate here upon principle and not upon expediency, or a calculation of dollars and cents as to which amount shall be the larger—that received by the city or that extracted from it by an improper act of the Legislature.

I desire, in conclusion, to take issue with the gentleman from Lycoming, (Mr. Armstrong,) and say that the prohibition in the old Constitution is not intended simply to prevent judges gathering here and there a fee or two from another source; it is to make the judiciary independent of every authority, of every person, and of every corporation except the State whose laws it administers. That is the principle upon which the judiciary should rest and only upon that, and they should receive no side compensation, no collateral advantage such as this imposed by the extravagant generosity of a Legislature which has the power to tax where it is not subject to the obligation to pay.

Mr. TEMPLE. I desire to vote for the amendment of the delegate from Philadelphia, but I am sorry that he has introduced it at this place. I think he is forgetting the fact that from the prothonotary's office in the city of Philadelphia, the fees paid by suitors will give, in my judgment, sufficient revenue to pay the whole judiciary system of Philadelphia. This proposition is here out of place. That the fees which are paid into the prothonotary's office, and which ultimately find their way to the city treasurer's

office, should be devoted to the support of the judiciary, I think would be better.

Mr. LITTLETON. I will answer the gentleman by asserting that I am not contending for a fee but for a principle.

The CHAIRMAN. The question is on the amendment of the delegate from Philadelphia (Mr. Littleton.)

The amendment was agreed to, there being on a division, ayes thirty-six; noes fourteen.

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

Mr. J. N. PURVIANCE. Now, I move to strike out the section and insert in lieu of it the following, which, I will remark before reading it, is the Constitution of the State as it now is:

"The judges of the Supreme Court and the presidents of the several courts of common pleas shall, at stated times, receive for their services an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth, or under the government of the United States, or any other State of this Union. The judges of the Supreme 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 were respectively elected."

Mr. ARMSTRONG. Mr. Chairman: I desire to call the attention of the committee of the whole to the changes that have been made in this section as compared with the present Constitution. Substantially the pending section is the same as the corresponding section of the Constitution, and the variations, which are not very great, are only verbal changes. We have stricken out of the present Constitution the words "presidents of the several courts of common pleas." We have now no president judges. They are all judges of the court of common pleas, and therefore the distinction is unnecessary.

Again we have stricken out the words "the government of the United States," and we leave it stand "the United States." The words "government of" were of course implied, and therefore ought not to be in the section.

We have also left out the words "of this Union" in the phrase "any other State of this Union" as being unnecessary. "Any other State" means of course "any other

State of this Union," and what is clearly implied in the mind ought to be left out in the expression. There is no necessity for these words.

Then as to the latter clause of the present section of the Constitution, "the judges of the Supreme 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 were respectively elected," that is all fully provided for in an additional section, with some other matters which it was thought proper to put in. I think there is no necessity for this amendment, and it only tends to confusion.

Mr. DARLINGTON. I move to amend the amendment, by inserting after the words "fixed by law" the words "and paid by the Commonwealth."

The amendment of Mr. Darlington was rejected.

The CHAIRMAN. The question is upon the amendment of the gentleman from Butler (Mr. J. N. Purviance.)

On the question of agreeing to the amendment a division was called for, which resulted eight in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

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

Mr. J. N. PURVIANCE. Mr. Chairman: I move to amend, by inserting after the word "diminished," in the first sentence, the words "or increased." The sentence would then read "receive for their services an adequate compensation to be fixed by law, which shall not be diminished or increased during their continuance in office." Now I suppose that if the salaries of judges ought not to be diminished they ought not to be increased.

Mr. CORBETT. We have provided for that in another article.

Mr. J. N. PURVIANCE. It will do no harm here. I firmly believe that more harm grows, or at least can grow, out of the fact that the Legislature may increase the compensation of the judges than that they may not decrease it. The judges may be interested in acts of Assembly and must be interested in their construction, and the Legislature might be induced to increase the compensation of judges in view of the possible effect it might have upon their construction of certain acts of Assembly. Therefore I think the words "or increased" should be added after the word "diminished."



Mr. H. W. SMITH. Mr. Chairman: I suggest to my friend from Butler (Mr. J. N. Purviance) that he can perhaps better accomplish his purpose by striking out the words "not be," before the word "diminished," and inserting the words "neither be increased nor;" so that the sentence will read "shall neither be increased nor diminished during their continuance in office." That is the same phraseology that has already been adopted in the Constitution in relation to the compensation of Governor.

Mr. J. N. PURVIANCE. I will look at the amendment and see if it will answer my purpose just as well.

Mr. H. W. SMITH. Mr. Chairman: I have not occupied much of the time of the Convention in talking and do not intend to do so now; but I think that this amendment ought to be introduced and become part of the Constitution. In the old Constitution of 1790 we found the provision. Then there was no additional law judges in the courts of common pleas, and I am not aware that there were then any district courts for the trial of civil causes. But the provision in the old Constitution of 1790 was that the judges of the Supreme Court and the president judges of the court of common pleas should receive an adequate compensation for their services, to be fixed by law, which should not be diminished during their term in office. If I am not quite correct as to the phraseology of the article, I am sure that I am substantially correct. In the Convention of 1837-38, although that part of the Constitution in relation to the judiciary was altered, the clause of which I have spoken in the Constitution of 1790 was allowed to remain in precisely the same language, and neither has that language been changed by any of the legislative amendments that have been proposed and adopted by the people, and which are now part of the Constitution.

Under this what do we find? I care not what judges decide; I care not what salaries they receive as constitutional. Sworn as I am to discharge my duty with fidelity here, I discharge it as I understand it. I believe that the framers of the Constitution of 1790 intended that the salary of the judge should be that described in the Constitution, that it should be fixed by law and during the continuance of the judge in office; not that it should be unfixed annually and fixed annually as it has been for the last seven or

eight years by increasing it under legislative enactment. Of course I take it for granted that the judges have considered it constitutional, for I believe they have all received it and none of them would have received money unconstitutionally.

Now look at this! In Purdon's Digest, the late edition, on page 1301 of the second volume, is to be found the act of Assembly of the thirteenth of May, 1856, which is the existing law fixing the salaries of the judges under the section of the Constitution I have adverted to. I suppose there is some mistake about it, for if my recollection serves me right the Legislature about the year 1860 increased the salaries of some of the judges; that is it was fixed and settled at a higher rate, of which I do not complain. I do not wish to be understood as being unwilling to pay judges a full and ample compensation. I think they ought to be well paid; they ought to be adequately paid; and I am in favor of that; but during their continuance in office, like all others when they accept an office at fixed salary, it ought not to be increased nor diminished. They knew the terms upon which they took it, and the clause that I have adverted to is the same, I believe, in the Constitution of the United States; at least one able judge of the Supreme Court of the United States, — Judge Story — held that that adequate compensation to be fixed by law which could not be diminished during the judges' continuance in office, was the salary paid when he took the office and assumed the duties of it, and any addition that the Legislature made afterwards to it could be withdrawn. Our Supreme Court, I believe, though, decided differently. They did at one time decide that a judge's salary was taxable for the *bona fide* purpose of contribution, the same as all other citizens were taxed. That was in the case of the Commonwealth *vs.* Judge Chapman, decided between 1828 and 1830. In 1844 or 1845 when the same question came up again, when the taxes in Pennsylvania were increasing to a degree that was alarming, they decided that a judge's salary could not be taxed for State purposes; and the judge who delivered the opinion of the court said, "twist it and turn it as you will, it is a reduction which is prohibited by the Constitution."

Now, what have the Legislature been doing? By reference to the appropriation bill of 1864, which was the start of it, passed on the fifteenth of May, 1864, they

gave to the judges of the Supreme Court the Chief Justice five thousand dollars, and each associate four thousand seven hundred dollars; the Philadelphia judges three thousand seven hundred dollars; the Allegheny county judges three thousand six hundred dollars, and the law judges in the other State courts two thousand five hundred dollars, and the president judge of the Twelfth judicial district, that tries the Commonwealth causes at Harrisburg, three hundred dollars more, "for the present year and no longer." The present editor of the late edition of Purdon considers these laws unconstitutional. They run on in that way. They did the same thing in 1865. They increased them "for the present year." Sometimes they say "during the present year." The last law adverted to in Purdon is the appropriation bill of 1872, and he considers it as unconstitutional; and in 1872 they say "for the present year and no longer," to be certain of it. Now, is this not unfixing the salary of the judges annually and re-fixing them and nothing more?

I find the general laws passed by the Legislature the present year 1873, sent to us in pamphlet form, they do the same thing, and they fix the salaries of judges, and it reads just like the other. I will not read the whole of them, but the different acts of Assembly passed in 1864, 1865, 1866, 1867, 1868, 1869, 1870 and 1871, and the last one that I have adverted to in 1872, run on just in the way that I have stated. I would occupy too much time in running over the whole of them, and I will just advert to the language in the act of 1873, which was handed to us a day or two ago:

"SECTION 26. For the salary of the judges of the Supreme Court, the sum of \$35,000, or the sum of \$7,000 to each judge for the present year, to be in lieu of all daily pay, mileage, or other expenses heretofore allowed by law."

They have got it up to \$7,000 now, and so it runs on to the other judges, each judge to receive so much "for the present year," the Philadelphia judges, \$5,000, the judges of Allegheny county, \$5,000, the judge of the Twelfth judicial district, \$5,000; and in this latter case they do not say, and have not said for the last five or six years, "for the present year." The judges of the other districts and the associate law judges are put at \$4,000. That is just double the salary fixed by law under the Constitution.

Mr. CORBETT. Will the gentleman allow himself to be interrupted?

Mr. H. W. SMITH. Certainly.

Mr. CORBETT. Is not this whole subject covered by the sixteenth section of the article reported by the Committee on Legislation. Section sixteen, as it was adopted, reads thus:

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

The truth is it is much broader and guards other officers besides judges.

Mr. H. W. SMITH. Well, sir, if it is adopted here as it has been modified according to my suggestion, there can be no difficulty or doubt about it. If the principle is correct, I hope the committee will adopt it.

Mr. DARLINGTON. We had better adopt it here and then the Committee on Revision can arrange it.

Mr. J. N. PURVIANCE. Mr. Chairman: I should like to hear the amendment of the gentleman from Berks read.

The CHAIRMAN. The amendment is to strike out the words "not be," in the fourth line, and insert "be neither increased nor."

Mr. J. N. PURVIANCE. That amendment of course is substantially the same as the one which I offered. The amendment is a very important one, and one that I trust will receive the deliberate consideration of the committee. I undertake to say that more evil grows out of the fact that the Legislature may increase the salary than that they may not diminish it. Either way, of course, it should be so provided in the Constitution that the different departments of the government, the judiciary and the Legislature, should be entirely independent of each other.

Now how can you have that independence when you have a judiciary that is constantly petitioning the Legislature to increase their salaries, begging the members to increase their salaries? I venture the assertion that for the last twenty years there are many members of the Legislature who have received letters from judges asking an increase of salary; and I undertake to say that in a court of justice, when important causes are being tried, you may see sitting around there Senators and members of the House who have the power at the very next winter to declare what the salary of the judge shall be, and whether they are there to exercise any influence upon the court is

not the question; they are simply there, and bias may arise in the mind of the judge in favor of this or that side of a case because of the presence of those that he sees there and that he understands their inclination to be towards the particular side of the legal question that is before the court for consideration.

I support this amendment with great sincerity, and because I believe it to be a very important one, and one that, if adopted, makes the judiciary and the legislative department of the government entirely independent of each other. As they now stand I say they are not independent; the one is dependent from year to year on the Legislature for an increase of salary, and to that body is the power to recall that increase.

What independence can there be under such circumstances? Look at what has been read from the appropriation bills. Instead of the judges having a fixed salary, as was the intention of the Constitution, every year you find that salary varied, and then they insert, for the purpose of not provoking opposition to it among the people, that it shall only last for one year; and the next year comes around the judges are importuning them to make it go one for two or three years more, and thus the Legislature is beset every year by a branch of the government that it ought to be entirely independent of in all respects. The judiciary have to construe the laws that the legislative body makes, and they should be free and independent to do so without reference to the action of that body either in increasing or diminishing their own salaries.

Mr. ARMSTRONG. Mr. Chairman: There has not been, I believe, a provision at any time in the Constitution of Pennsylvania limiting the discretion of the Legislature in this regard. We are making a Constitution which we hope will last many years. We cannot foresee all contingencies; we cannot foretell what may happen in all the future any more than we could ten or twelve years ago; and yet, if such a provision had been in the Constitution twelve years ago, there is not a judge in the State that would have been able to live on his salary. There have been no abuses connected with this subject. Judges have never received too large salaries. I think, on the contrary, the error has been that they have received far less than they should have received.

Mr. J. N. PURVANCE. The remedy in that case would be to resign and be elect-

ed over again, and come in under the increased compensation.

Mr. ARMSTRONG. Now look at such a proposition as that. Judges must resign and submit themselves again to an election, make themselves competitors again before the people! Under this Constitution Supreme Court judges will not be re-eligible. I think it would be a very unwise proceeding.

Mr. CORBETT. Mr. Chairman: I hope the committee will vote down this amendment. It is entirely unnecessary under the sixteenth section of the article adopted in the report of the Committee on Legislation. Besides that I am well satisfied that all acts passed by the Legislature increasing the salaries of judges for particular years were unconstitutional. They had the power to increase them generally, and, as the distinguished chairman of the committee says, I believe that power was right; but it certainly was unconstitutional to pass laws allowing increased pay for a single year, because by the Constitution as it existed they were to receive a stated salary.

I hope the committee will vote down this amendment because it is already covered by what has been adopted.

Mr. ARMSTRONG. I have but a single additional suggestion to make. The gentlemen of the committee will observe that the commissions of the judges expire at regular times. Under such a system, there will be one judge of the State receiving a different compensation from another doing the same service, and if the amendment were adopted there would be no possible mode of avoiding it.

Mr. LITTLETON. Whilst we may not accept the logic of our friend from Butler, we still at least rejoice that he has found something in the old Constitution that may in his judgment be wisely amended.

Mr. MACCONNELL. I concur in the suggestion of the gentleman from Clarion. I would strike out all about increasing or diminishing the compensation; but if the proposition is to be made on one side I think both should be included. I think the position of the gentleman from Berks is sound. There is scarcely a winter that there is not a petition circulated among members of the bar praying the Legislature to increase the salaries of judges.

Mr. CORBETT. Allow me to interrupt the gentleman. Will not section sixteen of the report I have referred to cover this?

Mr. MACCONNELL. I think so, but why keep in the part that would prevent them from diminishing and strike out that which would prevent them from increasing the salaries? I would strike out both. If gentlemen do not sign these petitions they are considered as inimical to the judges. I hope this provision as to increasing or diminishing the salaries of judges will be stricken out.

The CHAIRMAN. The question is on the amendment of the delegate from Berks (Mr. H. W. Smith.)

The amendment was rejected.

Mr. J. M. WETHERILL. I offer the amendment suggested some time ago by the gentleman from Philadelphia, (Mr. Littleton,) to insert after the word "no," in the fifth line, the words, "other compensation for their services from any other source, nor any." It was intended to be inserted, I believe, but it was not.

The CHAIRMAN. The amendment of the delegate from Philadelphia (Mr. Littleton) was adopted.

Mr. J. M. WETHERILL. If it was not adopted with these words in, I offer these words as an amendment.

The CHAIRMAN. After the word "no," in the fifth line, it is proposed to insert, "other compensation for their services from any other source, nor any."

Mr. LILLY. I rise to a point of order. I think the question is on the amendment of the delegate from Butler to strike out and insert.

The CHAIRMAN. The Chair will state that the delegate from Butler accepted the modification of his amendment offered by the delegate from Berks. The question is on the amendment of the gentleman from Schuylkill.

Mr. J. M. WETHERILL. I learned this morning for the first time that the city of Philadelphia is in the habit of paying compensation to certain of her judges. If the Legislature has the power to authorize municipal corporations to compensate judges for certain services discharged by them, I see no difference in principle between allowing municipal corporations to pay the judges and railroads or other corporations doing it. That principle introduced as applicable to the municipal corporation of Philadelphia may be used as a precedent in the future for railroad or other corporations in the State salaried judges. I should think that the people of this Commonwealth would—I know that I should for one—object to any such principle whereby any corporation of the

State can have in its pay any judicial officer whatever. I therefore offer the amendment to include not merely municipal corporations, but to provide that all railroad and other corporations or individuals shall be prohibited by the Constitution from increasing or adding to in any way the salaries or emoluments of the judges.

The amendment was agreed to.

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

The section as amended was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section nineteen as follows:

SECTION 19. The judges of the Supreme 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 be respectively 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 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 preceeding his appointment or election, and shall have had at least five years' practice in some court of record in the State.

Mr. STEWART. 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 (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.

WITHDRAWAL OF A MEMORIAL.

Mr. BIDDLE. I ask leave to withdraw the communication presented yesterday by Mr. Leaming.

Leave was granted.

Mr. LILLY. I move that the Convention take a recess.

The motion was agreed to; and (at twelve o'clock and fifty-four 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. LILLY. I move that the House resolve itself into committee of the whole to proceed with the consideration of the judiciary article.

The motion was agreed to, and the House resolved itself into committee of the whole on the article reported by the Committee on the Judiciary.

The PRESIDENT. Mr. Harry White not being in the House, Mr. Lawrence will be kind enough to take the chair.

Mr. Lawrence accordingly took the chair as chairman of the committee of the whole.

The CHAIRMAN. The committee of the whole have had again referred to them the article reported by the Committee on the Judiciary. The question is on the nineteenth section.

Mr. DARLINGTON. I ask a division of the question, to end at the first paragraph.

The CHAIRMAN. The question will be on the first paragraph of the section, which will be read.

The CLERK read as follows:

"The judges of the Supreme 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 be respectively elected."

Mr. BUCKALEW. The words "or county," in the fourth line, are unnecessary. I move to strike out the words. I only want to make the language shorter. It is impossible to have a judge without a district, and the words "or county" are surplusage.

The question being put on the amendment, the ayes were twenty-five, less than a majority of a quorum.

Mr. BUCKALEW. I call for the negative vote.

The noes were thirteen.

Mr. BUCKALEW. I believe in minority voting, but not exactly in this form. [Laughter.]

The CHAIRMAN. The amendment will be passed over for the present, as there does not appear to be a quorum voting.

Mr. LILLY. Since I have resided in the judicial district that I now live in, there have been four president judges. The Constitution under which we now live is

worded, I believe, about as does the paragraph under consideration; and of those four judges only one (the present one) has resided in the district, although the Constitution required them to so reside. Our people do not want to make our law judges law-breakers, hence I would like to vote for the striking out of that restriction or direction as to residence in the district. If, however, it suits the lawyers and the rest of the State, and as I practice at no kind of bar, law or otherwise, I will acquiesce, and will move an amendment at this time as those around me do not desire the alteration.

Mr. BROOMALL. I would make a suggestion to the gentleman that a provision that no judge should be required to reside in Carbon county against his will, would probably answer his purpose. [Laughter.]

Mr. BOWMAN. I should like to ask the gentleman from Carbon if he does not know the fact that a judge performs judicial duties when his court is not in session?

Mr. LILLY. I know he performs some kind of duties, but I know he does not perform very much duties in our county.

Mr. DARLINGTON. This section is precisely the same down to the end of the paragraph ending with the word "elected," as the present Constitution, and I suppose there was no intention to make any change in it.

The CHAIRMAN. The question is on the first paragraph of the section.

The first paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"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 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."

Mr. DAVIS. I propose to amend this last paragraph, by adding at the end thereof "immediately preceding his election or appointment."

I offer this amendment for the reason that I have known some lawyers to be elected judges who for several years prior to their election had not been engaged in

practice. It is well known that there is no profession perhaps in which the members so soon become rusty as the profession of the law; and from my own experience and the experience of others, I know that it is not a very pleasant task to educate judges after they come to the bench, or wipe off the rust they have contracted.

Mr. MACCONNELL. I suggest to the gentleman to strike out the words "or appointed" in his amendment. We have provided that all judges shall be elected.

Mr. NILES. In cases of vacancy they are to be appointed.

Mr. ARMSTRONG. I fear that this amendment would greatly limit the field of choice, and I can see no particular advantage to be gained by it. It might often happen that a very competent lawyer, one universally admitted to be so, would be the choice of an adjoining district, and I can see no reason why he should not be allowed to be chosen.

Mr. DAVIS. The gentleman misapprehends the amendment. I propose to add at the end of the paragraph the words "immediately preceding his election or appointment." Residence in the State and that he shall be a citizen of the United States are provided for before in the section. My amendment provides that he shall be a practising lawyer at least five years preceding his appointment or election.

Mr. ARMSTRONG. I see no objection to that.

The amendment was agreed to.

Mr. BRODHEAD. I move to strike out all after the word "age," in the eighth line, down to and including the word "election," in the tenth line. By the amendment just adopted part of this clause is rendered unnecessary, and the first part of it is unnecessary anyhow. It only adds to the length of the section.

The CHAIRMAN. The words proposed to be stricken out will be read.

The CLERK read as follows:

"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."

Mr. ARMSTRONG. I do not see any purpose to be gained by that amendment. It simply strikes out that provision which requires that the judges shall be citizens of the United States and residents of the State.

The amendment was rejected.

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

"No person while a judge of a court of record, nor within one year thereafter, shall be eligible to any elective office."

The amendment was rejected; less than a majority of a quorum voting in the affirmative on a division.

Mr. DARLINGTON. Mr. Chairman—

Mr. HARRY WHITE. I call for a count of the House.

Mr. DARLINGTON. I have the floor.

Mr. HARRY WHITE. I call for a count of the House. I insist that there is not a quorum present.

The CHAIRMAN. The Chair decides that there was a quorum some time ago by the count of the Clerk. The gentleman from Chester is entitled to the floor.

Mr. DARLINGTON. I wish to bring to the consideration of the Convention the only leading important question in this section, and that is, is it right to limit the choice of the people by the age of the officer? If it is not, then we have no need of this section at all. Now, is it right to say that no person shall be elected judge of the Supreme Court unless he be at least forty years of age?

The CHAIRMAN. If the gentleman from Chester will give way for one moment, the Chair will state to the gentleman from Indiana (Mr. Harry White) that there are over seventy members present by count.

Mr. DARLINGTON. Is it right to say that the people shall not elect a man judge of the Supreme Court until he is forty years of age? There are men who might be forty years of age before they would be called upon to take the office and yet might not be forty years of age at the time of the election.

Again, there are many men amply qualified for this office three, four or five years before arriving at the age of forty; and the same may be said of the judges of the common pleas. Men are qualified by their talents and their learning at an earlier age than you here prescribe for either of these offices. I would leave that for my part to the sound judgment of the electors. There can be no fear that the people of Pennsylvania will take up an inexperienced young man for judge of the Supreme Court. There can be no fear that either party will present such men; nor can there be any fear that they will present them for the common pleas. Men must have attained by their character and

standing and learning sufficient position in the community to entitle them to be voted for and respected. I think it is all wrong to fix any arbitrary rule. I would prefer striking out the whole section.

Mr. ARMSTRONG. No restriction can be placed in the Constitution upon any particular office that is not open to a similar argument to that now suggested. Undoubtedly there may be exceptional cases where persons would be entirely competent for the office before attaining the age prescribed; but we are seeking to adopt a general rule, and we are seeking to cut off the abuse which consists in allowing young men without experience, by the mere force of their popularity, to force themselves into positions for which they are not really properly qualified. I think it is customary in the Constitutions of other States to adopt a limitation of this kind, and I think it would be advantageous here.

Mr. DARLINGTON. Can the gentleman inform me at what age Judge Story went on the bench of the Supreme Court of the United States?

Mr. ARMSTRONG. Oh, yes; I could tell you that a Judge Gibson was a young man and Judge Story was a young man when he went upon the bench, and in the whole experience of the country you might pick out half a dozen such cases; but, sir, we are not legislating for exceptions here; we are endeavoring to provide a safe rule.

Mr. BUCKALEW. I have no objection to imposing a limitation, but I think thirty-five years would be sufficient. One thing ought to be remembered, that men who are put upon the bench of the Supreme Court and who are to remain there for twenty-one years ought to be in the vigor of life. One inconvenience felt in all courts of this kind in our State, and in other States, is that judges get to some extent superannuated. Commonly, they will be chosen when well on in life; but if there is a competent and fit man thirty-five years of age, who has been a lawyer twelve or fourteen years, and may have done some service on the bench in an inferior court, I would not prevent the people choosing him. I think a reduction of five years in the age required might give a better opportunity for selecting material for that court, while the limit of thirty-five years meets the requirement which the chairman of the committee has spoken of. I think also that thirty years of age is a little higher than is necessary

in the case of judges of the common pleas. A lawyer who has been, it very often happens, six or seven years at the bar in practice, who has become thoroughly known to the people, is entirely acceptable to them. At the age of twenty-seven or twenty-eight, judges are very often chosen, and we must remember that very often in the country districts there is great difficulty in finding a fit, competent and proper man for nomination to this office in the district itself. In fact in a great many districts the members of the bar have met and consulted together and on behalf of their people have extended invitations to lawyers sometimes in remote parts of the State to come and serve them. If it is not strongly objected to by the members of the Judiciary Committee, I wish they would consent to fix these ages a little lower, say at thirty-five and twenty-seven respectively. I think it would be an advantage.

Mr. ARMSTRONG. That is a mere matter of detail. A young man at twenty-five years of age has a great deal of the boy about him necessarily. He has not any of the experience of life that makes him a thorough man, and I think the limitation is quite low enough. I am correct, I believe, in saying that in France the age of majority is fixed at twenty-five years, and certainly it is much beyond the age of twenty-one in many countries. I think no harm will come of this. A competent person for a judgeship may be found at twenty-five, but I think it would not be difficult to point out some men in the State who were elected judges when they were entirely too young.

Mr. DARLINGTON. I move to strike out "forty" and insert "thirty-five."

The CHAIRMAN. The question is on the amendment of the gentleman from Chester to strike out "forty" and insert "thirty-five."

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 paragraph.

The paragraph was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section twenty, as follows:

SECTION 20. The Supreme Court, and the several courts of common pleas 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 not *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.

Mr. ARMSTRONG. This section is the same as it stands now in the Constitution. I think it is not adapted to the present condition of the law and practice of the State in regard to chancery jurisdiction. I move the following amendment, which I think embodies the idea in a more concise and better phrase:

"The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts such powers of a court of chancery as are now vested by law in the several courts of common pleas of this Commonwealth, or that may hereafter be conferred upon them by law."

The CHAIRMAN. The question is on the amendment of the gentleman from Lycoming.

The amendment was agreed to.

The section as amended was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section twenty-one as follows:

SECTION 21. No duties shall be imposed by law upon the Supreme Court, or any of the judges thereof, except such as are judicial, nor shall 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.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section twenty-two, as follows:

SECTION 22. 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 jurisdiction and powers to be exercised by the orphans' court of such county.

Mr. ARMSTRONG. I move to amend, by striking out all the section after the word "court," in the fourth line, and inserting the following, which I have had printed for the convenience of members:

"A register's office for the probate of wills and granting letters of administration, and an office for 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.

"In every judicial district wherein the population shall exceed one hundred thousand, the Legislature shall, and in any other county or judicial district may, establish a separate orphans' court, to consist of one or more judges, who shall be learned in the law, and which court shall exercise all the jurisdiction and powers now vested in or which may hereafter be conferred upon the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such district or county in orphans' court proceedings shall cease and determine.

"The register of wills shall be compensated by a salary to be fixed by law, and shall be *ex officio* clerk of the orphans' court, and subject to the direction of said court in all matters pertaining to his office. Assistant clerks may be appointed by the register, but only with the consent and approval of the court.

"All accounts filed in said court shall be audited by the judges and clerks thereof, without expense to parties, except where all parties in interest in 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."

I desire to state to the committee that this is a very careful revision of the section as reported by the committee and the proposition offered as an amendment by Judge Woodward. Some parts of that amendment offered by Judge Woodward have not been embodied in this because



they were adopted in other places. I will call the attention of the committee of the whole to the omitted parts. We have omitted "whose term shall be ten years if they so long behave themselves well, and whose salaries shall be fixed by law." That we have omitted because it is already provided for in another section. We have also omitted the words in Judge Woodward's amendment "and the register for probate of wills and granting letters of administration." It is not expedient that we shall destroy the office of register of wills. We desire to preserve it because there are some counties in the State where it is wholly impracticable to create a probate judge, and the office of register of wills is a necessity, because in those counties they must have a place in which wills can be filed and letters of administration granted. Neither is it at all easy to remedy this by the establishment of a probate court in a district, because it would leave the counties of that district without a convenient place of recording a will and getting letters of administration.

Mr. BIDDLE. I ask the chairman of the Committee on the Judiciary whether there has been any provision made in regard to the auditing of accounts.

Mr. ARMSTRONG. That is provided for in this section.

One word more of explanation, it is perhaps necessary that I should make. I have said in the amendment I have proposed that "the register of wills shall be compensated by a salary to be fixed by law, and shall be *ex officio* clerk of the orphans' court." I will state the purpose of that. We require accounts to be audited by the judges and clerks of the orphans' court. It is proper that there should be an official connection between the judges and the register, by making him *ex officio* clerk of the court. It is provided that the register shall be "subject to the direction of said court in all matters pertaining to his office;" and it is also provided that he may appoint assistant clerks, "but only with the consent and approval of the court." This brings the whole system into harmony, and accomplishes all that can be obtained in that direction. I think the amendment as it now stands is well considered, and I believe it to be a very great improvement upon either the section as originally offered or the amendment proposed by Judge Woodward, and it proposes all that is valuable in both.

Mr. DARLINGTON. Mr. Chairman: When Judge Woodward presented his proposition, and said that he wished it to be incorporated into this article, it seemed to be an improper time. He withdrew it, stating that he would probably not be here when the proper section for the addition of his amendment was reached, and I as well as several other gentlemen promised that we would present it in his stead. I believe Mr. Biddle also promised that he would move it as an amendment.

I now hold his amendment in my hand, and propose to ask that it be inserted in lieu of the amendment proposed by the gentleman from Lycoming (Mr. Armstrong.) I submit Judge Woodward's proposition now as an amendment to the amendment. I believe it should come in at the same place in the section of the article reported by the Committee on the Judiciary, that the chairman of that committee indicated for his amendment.

The CHAIRMAN. The gentleman from Chester moves an amendment to the amendment. It will be read.

The CLERK read as follows:

"In counties whose population shall exceed one hundred thousand, the Legislature shall establish courts of probate, to consist of one or more judges, who shall be learned in the law, elected 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.

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 in 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."

Mr. DARLINGTON. Mr. Chairman: I now hope that this proposition will receive the favorable consideration of the committee of the whole. It will be perceived that it proposes to establish courts of probate; first in the large counties containing over two hundred thousand population and susceptible of being introduced at subsequent periods into other counties, as the necessities and conveniences of the people may suggest. We have all been struck, I have no doubt, with the anomalous condition of things in Pennsylvania, where the estate of a deceased person passes into one office and the proceedings with regard to it are transferred from thence into another, thus necessitating two offices and two places of record for all those things which pertain to the settlement of an estate. If we establish courts of probate as they exist in other States, or as is proposed by this amendment, we authorize the election of an officer who shall be qualified as the judges of other courts are, who shall be a judge of probate; shall receive the probate of wills and grant letters of administration; receive the settlement of estates and accounts; decide upon exceptions which may be made to the accounts themselves, or refer them to auditors upon the appointment of the parties; who shall appoint guardians; who shall grant orders to sell to pay debts; who shall conduct proceedings in partition; who shall, in short, do everything from the time the breath is out of the owner until the heirs have the estate settled between them. Then when you come to search the records to find out what has been done, you have only to go to the one office; you abolish or cast together the offices of register and clerk of the orphans' court, and you make them all in one office. To be sure you make provision for the probate judge to have a clerk, but you do not necessarily increase the number of officers, for the probate judge and the clerk can do all the duties of the register and clerk of the orphans' court.

It is only a question for us to consider whether we will adhere to this singular anomalous system which we have in Pennsylvania, or stop now before we are any older, recall the past one hundred and fifty years, start upon a new track and strike out for ourselves and let us estab-

lish for future generations and for future ages that which we shall suppose the best plan of providing for proceedings in connection with the settlement of an estate.

But I do not mean to argue the question. I have already expressed the views that I entertain on this subject. I simply now present this amendment, trusting that it will receive the sanction of the committee of the whole so that we may incorporate it into the Constitution, or, at all events, give the Legislature power to incorporate it into our system wherever it may be found necessary. For instance, in Chester county, we do not now, perhaps, need this court of probate, but in forty years or less we may need it. In other counties they may need it much earlier, and I would gladly introduce this system, so that we may thus judiciously provide for the settlement of everything that relates to the estate of a decedent.

Mr. BOYD. I would like to ask the chairman of the Judiciary Committee if it is intended to insist upon the number of population which he names in his amendment as requisite for the formation of an orphans' court. He names one hundred thousand. Can it not be made seventy-five thousand?

Mr. ARMSTRONG. That is a matter of detail, about which I care very little. It is a matter for the Convention to determine whether it shall be two hundred thousand, or one hundred and fifty thousand, or one hundred thousand or seventy-five thousand. All these various numbers have been mentioned.

Mr. CORSON. Make it seventy-five thousand.

Mr. ARMSTRONG. The phraseology of the amendment would now make it absolutely imperative upon the Legislature as to the population prescribed. I have no objection to seventy-five thousand, if that be the judgment of the Convention.

I would merely say with respect to the amendment proposed by the gentleman from Chester (Mr. Darlington) that some parts of it are already embodied in this amendment, and some others have been adopted in other sections. It is not necessary now to re-argue the case. There has been a great deal of discussion upon it already, and it is thoroughly understood—

Mr. CORBETT. Mr. Chairman: There are some things left out in the proposition of the chairman of the committee that are embodied in Judge Woodward's report, that I like much better than the sub-

stitute offered by the gentleman. Where this orphans' court is created separate and distinct, we retain the register. I concur with the opinion of the gentleman from Chester that where we create this court separate and distinct from the other courts, there ought to be an officer having charge of all the papers, discharging his duty daily, ready whenever occasion arises upon citation, to bring parties in and to make the necessary orders and decrees for the sale of real estate and everything appertaining to his office. Now, if you create a court separate and distinct to be called the orphans' court, to sit at a certain period, of course you give relief, but not to the extent that an officer who is the judge of the court, and present in his office, sitting and discharging his duties daily would give.

I am decidedly in favor of the proposition offered by the gentleman from Philadelphia (Mr. Woodward.)

Mr. ELLIS. Mr. Chairman: I certainly would be opposed to the second clause of this section if the word "shall," after the word "Legislature," is retained. I am in favor, however, of giving to the Legislature a grant of limited power to establish this court in any district of the State where the business will warrant it and the people desire it. I am in favor of giving this grant of power because I am also in favor of striking out of the first section as we have adopted it, the words, "and such other courts as the Legislature may from time to time establish." I think this is a very wise grant of power, if we strike the other words out, which, I hope and certainly believe, the committee will do in time.

Mr. ARMSTRONG. If the gentleman will allow me, I would suggest that he would meet all the requirements of his own county, and perhaps with advantage to the whole State, if the word "one" is made "two," so that it shall read:

"In every judicial district where the population shall exceed two hundred thousand, the Legislature shall," and then in all other districts it is in the discretion of the Legislature.

Mr. ELLIS. If that is done, I then, for any local reason, have no objection.

Mr. ARMSTRONG. If the gentleman makes such a motion, I have no objection.

Mr. ELLIS. I move, then, to insert—

The CHAIRMAN. That is not in order at this time. The question is on the

amendment to the amendment, proposed by the gentleman from Chester.

Mr. WRIGHT. I desire the chairman of the committee to state something in regard to this board of audit. "All accounts filed in said court shall be audited by the judges and clerks." Now, the register is the clerk *ex officio*; he has the power by this section to appoint deputies. Who is the auditing board?

Mr. ARMSTRONG. I will state that the gentleman from Delaware suggested an amendment which strikes me favorably, and I have it marked on my notes, and I shall offer it in due time, to substitute the word "court" for the words "judges and clerks thereof," so that the duties shall devolve on the court. I think it would be a highly judicious amendment.

Mr. ALRICKS. I hope that the amendment of the gentleman from Chester will not be adopted. After the experience we have had in the practice before our courts, I presume by this time we should be familiar with the courts, and the section as reported by the committee adheres to the system with which we are familiar. We have never found any very great inconsistency between the register's court and the necessity of going into the orphans' court with our administration accounts. I trust at this late day, at the end of one hundred and fifty years, it will not be necessary to retrace our steps and follow the rules of the ecclesiastical or civil courts. The public, I think, will be better pleased with our work if we retain the name of orphans' court, with which the people, the laymen, are well acquainted; and if we retain the office of register so far as to have a person who will take the probate of wills, we shall have no difficulty afterwards in conducting all the business before the orphans' court as it has been conducted in times past. I therefore shall vote against the amendment of the gentleman from Chester.

Mr. COCHRAN. Mr. Chairman: It strikes me that if this system of probate courts is to be adopted at all, it is very clear that it should be adopted by counties and not by judicial districts. The advantage of a probate court is to have a court always open, wherever it is established, for the transaction of business, adjourning from day to day, and for receiving the probate of wills and granting letters of administration, taking proof of administration accounts, and doing all the business that appertains to an orphans' court.

If you establish probate courts by judicial districts having but one judge, probably, in each judicial district, the whole benefit of the system is lost. You have no resident judge in each county to transact all this business, which from the very first act is judicial. The register is himself, though he may be the most uninformed layman in the State, a judge, and acts judicially on everything of that character; and that is one reason why it occurs to me that the establishment of a probate court is desirable, not only that you may have competent officers to transact this business, but that all of it shall be included under the control and direction of a competent officer, who shall take it up from the beginning and carry through the proceedings to the close.

And, sir, in addition to that, it is considered a very important object among gentlemen here—I do not say that I consider it of such importance because I have never seen the practical inconvenience from it that others have suggested—it is considered by many gentlemen very important that all the auditing should be done by the court, and that the right to appoint auditors, except under very special circumstances provided in this section, should be taken away from the court entirely. If that is to be the case, then your probate court will be useful; it affords a still further argument why that court should be established by counties, and the jurisdiction of each probate court confined to its particular county, so that you may have the court sitting from day to day, and the judge there, not only to attend to the probate of wills and granting letters of administration and all the ordinary and extraordinary works of the orphans' court, but that he may be enabled to audit these accounts in due time, have the parties before him, receive the evidence, dispose of exceptions, and make the distribution.

Unless that system is pursued, it appears to me that the idea of establishing probate courts had better be abandoned. I could not vote for the section as it is now pending, and I care very little about the amendment, because if you confine the establishment of probate courts to a population of more than one hundred thousand, it will extend over so few counties of this State that practically it will amount to little or nothing.

Mr. ARMSTRONG. I call the attention of the gentleman from York to the fact

that it is now provided, in accordance very much with the suggestion he makes, that where the Legislature is to establish this orphans' court, it shall be in the county or judicial district. The reason of that is this: There are some judicial districts where they might desire to have this court, and yet with no county in it large enough to form a separate orphans' court. We do not wish to limit the discretion of the Legislature, whilst we do give them the power to constitute an orphans' court within any county of the State in their discretion.

As to the first phrase, "in every judicial district wherein the population shall exceed 200,000," &c., it would only apply to the city of Philadelphia and Allegheny county, where they already have a population to that extent, and where they are constituted separate judicial districts. Wherever the population is large, according to the practice which has prevailed in the State, they are constituted by the Legislature a separate judicial district. The power which we have vested in the Legislature is for the purpose of meeting the wants of those counties who might require an orphans' court, and yet without sufficient population to justify it; but the power to constitute an orphans' court in each county is complete within the discretion of the Legislature.

Mr. D. W. PATTERSON. I was going to refer to the objection made by the member from York, (Mr. Cochran,) but the chairman of the committee has said, and it seems to be admitted, that the Legislature may create separate orphans' courts in each county, because being applied to judicial districts they are often composed of two or more counties and it would not accomplish the object. The population named in this amendment would take in the county of Lancaster.

Mr. ARMSTRONG. No, that has been changed to 200,000. The suggestion was made by some gentleman on the other side, and I accepted the modification.

Mr. D. W. PATTERSON. It has not been voted upon.

Mr. ARMSTRONG. I thought I could accept it, but I believe I have no power to do so.

Mr. D. W. PATTERSON. I was going to object to it on that ground, as applying to Lancaster county; but even if it should be changed by the committee and made two hundred thousand, it seems to me it is multiplying officers very injudiciously and very unnecessarily. I learn from

conversation with members from the cities of Pittsburg and Philadelphia that they desire this arrangement, and in those cities it would not multiply officers and salaries very much, and probably it is a necessity; but certainly it cannot be said to be necessary when applied to the rest of the Commonwealth.

The substitute provides for auditing accounts, and the argument a few days ago, and impliedly by gentleman now, is that under it the auditing of accounts and distributing of estates will be done much more cheaply to the parties. It seems to me that there are many questions that arise in the distribution of assets that this judge and his clerk, who is to be the register, and no doubt a layman now, generally, would be entirely incompetent to pass upon. It does not provide for any appeal to the court of common pleas, so that in matters where the parties have any doubt they may take an appeal or file exceptions, and have the common pleas to pass upon them; and therefore, I suppose the intention is to require the appeal to be taken directly to the Supreme Court.

If evils exist in the distribution of estates and the auditing of accounts in Philadelphia who is responsible for them? I was surprised to hear it admitted on all hands here that abuses of that sort did exist, and to a terrible extent, in the city of Philadelphia. Why, sir, the courts have control of the auditors' fees, and if they do not regulate them in the city of Philadelphia it is a neglect, it is a failure to perform their duty, and the courts or the judges of the courts are guilty of mal-administration. It is an indirect reflection upon the whole profession. It is really and justly charging the courts and the judges with mal-administration. It is said that estates are robbed. By whom? Why, by the profession in the city of Philadelphia and in the city of Pittsburg. There is ample room to remedy that without any change of system or policy.

Let me advert for a moment to Lancaster county. There are thousands and tens of thousands of dollars distributed there yearly, and I have never heard any complaint. A case is referred to auditors. If it is an intricate case, it is referred to a gentleman of considerable experience at the bar; if not so intricate, to one of less practice and experience. The court supervises the auditor's fees; and I have never yet heard any complaint. It is done cheaper, more expeditiously, and without imposing that labor upon the court, than

it could be done by any other system or in any other way; and I apprehend that that is true of all the rural districts throughout the Commonwealth. I have never heard any complaint, and I have practiced in five or six of them in cases of that kind; and I am really astonished to find a single gentleman representing a rural district get up on this floor and advocate a measure of this kind—advocate increasing the number of judges, multiplying salaries, and thus putting the amendments which we propose to enact and which will be put before the people for their ratification in more and more danger.

Now, in our county, in this city, and in all large populous counties, the register's office is distinct from the orphans' court. In our county there is so much business that each one of those offices—each occupying a large room—is constantly filled or half filled. Now, it is proposed to do all this business in one department, either in one room or in adjoining ones. It is an utter impossibility. Again, it is proposed to abolish the register's court. We all know that the common pleas perform all the business of the register's court occurring throughout the year in six hours. That court is not called except to grant administration where there is some dispute, and which can be disposed of in five or ten minutes. It is not called unless there is a *caveat* filed to a will, and then they order the feigned issue asked for in five minutes. The old practice of hearing testimony before ordering a feigned issue is departed from throughout the whole Commonwealth; and all the business of the register's court occurring throughout the year is performed by the courts of common pleas in less than a dozen hours.

Now, it is proposed by this amendment to not only elect *one judge* to constitute both the register's and orphans' court, but *judges*. The Legislature may provide for judges; and that, too, in face of the fact that in many of the judicial districts the common pleas judges are not occupied half their time; in others it is different. In our district we have two law judges, and the docket is considerably behind—a year or a year and a half behind—owing perhaps to an increase of business during the war and to other circumstances. But I believe the judges are able to do all the business of the county—so in most of the districts of the Commonwealth. Yet we are multiplying judges and officers by this amendment and taking away busi-

ness from the judges of the courts of common pleas in the rural districts, when they have ample time to perform it. Because Philadelphia and Pittsburg want probate judges to distribute assets, they want to impose this system upon the rural districts at this great expense, when it is not required, when the necessities of the case do not demand it, and when the people of those districts don't want it. I think they must say that they have never heard any complaint about delay in regard to this matter or any complaint of extortion in charging for the distribution of assets. I have never heard of it, and I therefore hope this committee will not impose this system upon the rural districts when we do not want it and when it is not absolutely necessary. I therefore protest against this committee and these two great cities imposing this system on the rural districts, at so heavy a cost, where it is not at all necessary, and where neither the people or the bar want it.

Mr. ARMSTRONG. I will state, on behalf of the committee, that there is no intention to make it imperative except as to Allegheny and Philadelphia, because the words "two hundred thousand" sufficiently and amply cover that point.

The CHAIRMAN. The question is on the amendment of the gentleman from Chester to the amendment of the gentleman from Lycoming.

The amendment to the amendment was rejected.

Mr. ELLIS. Now, I move to strike out "one" and insert "two," in the first line of the amendment of the gentleman from Lycoming, so as to confine the imperative part of it to counties of 200,000 population.

Mr. ARMSTRONG. I hope that will be adopted.

Mr. WRIGHT. Is a further amendment in order?

The CHAIRMAN. It is not. There is an amendment to an amendment pending.

Mr. WRIGHT. I want to reduce it to 150,000.

The CHAIRMAN. If this be voted down, 150,000 can be substituted.

Mr. ARMSTRONG. I think it is better it should be 200,000, so as to make it imperative only on the two great cities we have mentioned, and leave it discretionary with the Legislature as to the rest of the State.

Mr. WRIGHT. I desire that my county shall be embraced in this provision. If there is any place where a probate court is wanted I believe it is the county of Luzerne. We have now about one hun-

dred and seventy thousand population, and the business is exceedingly extensive. I would like to have this provision extended to that judicial district and county. Every lawyer knows very well, who has practiced in the common pleas, that the judge is continually interrupted by motions made for the appointment of guardians, and other orphans' court business. Our judges are so entirely run down there that they absolutely need a probate court. I should like, therefore, to have this limit put at one hundred and fifty thousand. That will embrace the county of Luzerne, and in a few years it may extend to the county of Schuylkill.

Mr. ELLIS. Mr. Chairman: I have just this to say: So far as the cities of Philadelphia and Pittsburg are concerned, I confess I know very little about their judicial requirements; but I take the word of gentlemen when they say it is necessary for their cities; but when you take the country, and undertake to establish a rule as to population, that question has been intelligently discussed by this committee on several occasions, and it is a rule that ought not to be established in this case. You take the county of Schuylkill, which adjoins Luzerne; we have scarcely any farming population; our business in the orphans' court is very little, and I question whether we had a population in Schuylkill county, as it now is organized, of two hundred thousand people, we should have business enough for one separate judge in this court. But I am willing to leave the limit at two hundred thousand. We may possibly have enough such business when we come to that point; but, if not, the Constitution may possibly, by special amendment, be regulated in that particular. I confess that Luzerne is differently situated from Schuylkill; there is a large portion of Luzerne county that has a farming population, and the business in the orphans' court must be greater than it is in Schuylkill. But the gentleman has the Legislature, and there is nothing in this to prevent him getting a separate orphans' court in Luzerne county; and if the Legislature is asked properly, and it is shown to them that it will be wise to have this separate organization, the Legislature will certainly give it to Luzerne. But when you say one hundred and fifty thousand population, you will find Schuylkill jumping up to that point within the next five years, and she must have this court which she does not need. It is a rule which cannot

be put in the Constitution at this figure safely. It must be left to the Legislature, and in their wise discretion I think it may be safely left with the limitation at two hundred thousand.

The CHAIRMAN. The question is on the amendment to the amendment, striking out "one" and inserting "two."

The amendment to the amendment was agreed to, there being on a division ayes thirty-five; noes twenty-two.

Mr. ARMSTRONG. I move now to strike out the words "judges and clerks thereof," in the third line from the bottom of the section, and insert the word "court," so as to read "audited by the court without expense to the parties."

Mr. CLARK. I desire to ask a question. I see the last paragraph provides that "all accounts filed in said court"—I presume that refers to the orphans' court generally, whether a separate court or as it is now—"shall be audited by the court." Does it apply in all cases to the orphans' court; or simply to an orphans' court existing as a separate tribunal under this clause?

Mr. ARMSTRONG. I suppose it would refer to that which immediately precedes it: "And the said court," which I understand to mean the particular court here established.

Mr. CLARK. The last mention we have of the orphans' court is not as a separate court. The third paragraph reads: "The register of wills shall be compensated by a salary to be fixed by law, and shall be *ex officio* clerk of the orphans' court." That is in all cases.

Mr. ARMSTRONG. If the gentleman has any amendment to suggest to avoid ambiguity, I should be glad to accept it.

Mr. CLARK. I am only inquiring for information.

Mr. ARMSTRONG. If the language is imperfect let it be amended.

Mr. BIDDLE. There is a great value in the suggestion of the gentleman from Indiana. Accounts now of executors, administrators and guardians are filed in the register's office. The only accounts filed in the orphans' court are partial accounts of guardians. We had better fix this right now. It is not right as it stands.

Mr. ARMSTRONG. What is it the gentleman suggests?

Mr. BIDDLE. I would suggest "all accounts filed in the register's office and in said court."

Mr. ARMSTRONG. That would impose it as a duty on the judges of common pleas where they sit as an orphans' court.

Mr. BIDDLE. In counties other than the two counties referred to.

Mr. ARMSTRONG. That will be the effect of it as I understand. Perhaps it had better be so.

Mr. DAVIS. I should like to ask whether it is the intention to abolish the clerk of the orphans' court as distinctive office, or whether it provides merely for counties where a separate orphans' court is established.

Mr. ARMSTRONG. Only in those counties where a separate orphans' court is established.

Mr. DAVIS. The language is: "The register of wills shall be compensated by a salary to be fixed by law, and shall be *ex officio* clerk of the orphans' court." We shall have an orphans' court in counties where there is no such separate court, and then you abolish the distinctive office of clerk of the orphans' court.

Mr. ARMSTRONG. I think the construction of this section would necessarily refer back to that part which proposes the generic alteration, that is that a separate orphans' court shall be established, and would refer only to that.

Mr. DAVIS. Then it should be "said orphans' court."

Mr. CLARK. I understand the criticism to be that this abolishes the clerk of the orphans' court altogether, and we shall never have any clerk of the orphans' court. In other words, the register of wills will be the clerk of the orphans' court, and be known by the name of register of wills.

Mr. ARMSTRONG. I will submit an amendment in one moment to provide for this matter.

Mr. BUCKALEW. While the gentleman is preparing his amendment, I will say that I am afraid this subject has not been carefully considered in the construction of these paragraphs. I certainly do not attribute it to the chairman of the committee; I suppose this is matter which he has accepted from others.

The second division here is certainly very peculiar and it strikes me as in very obscure language:

"In every judicial district wherein the population shall exceed one hundred thousand, \* \* \* and in any other county."

That is certainly very careless language. Then again: "The Legislature shall, and in any other county or judicial

district." Are you to authorize the Legislature to make an orphans' court for a judicial district of several counties? That is the literal construction of the language. It seems to me that we should have been fortunate if the chairman of the Judiciary Committee had composed and prepared all this matter himself. We should have had it in better style.

Mr. ARMSTRONG. I am obliged to the gentleman. I did not prepare it all.

Mr. BUCKALEW. I am very happy to hear that my sagacity was not at fault.

Mr. Chairman, in the first place I think there is a pretty general agreement that we shall abolish the register's court. It is not necessary and its abolition will simplify our machinery. I think also there is a general disposition, if something in good form can be given us, to provide for the auditing of accounts by the orphans' court or by clerks appointed, or employed by them for that purpose. For these two things I am willing to vote, but I really do not like the other matter which seems to have been imported into this particular amendment from sources with which I am not particularly acquainted.

This power in the Legislature of creating separate orphans' courts can be conferred in general terms, if it does not now exist in the Legislature, and I do not think we had better burden the Constitution with these details which had better be left open for the Legislature. As to the first proposition, to wit: the abolition of the register's court, that is in the section itself; and I am inclined to vote against this amendment for one.

Mr. ARMSTRONG. I do not know that I would particularly object to the changes that have just been suggested by the gentleman from Columbia, (Mr. Buckalew,) but I desire to express the opinion that we had better act upon the propositions that are already before the committee of the whole. Any merely verbal changes or arrangements can be very readily suggested on second reading, when we shall have the entire article again considered and in more complete form. However, I will suggest an amendment or two by which probably the criticism of the gentleman from Columbia will be obviated.

I move to amend the third paragraph by inserting after the words "clerk of," the words "such separate." That will make the clause read, "and shall be *ex officio* clerk of such separate orphans' court."

The CHAIRMAN. Does the gentleman from Lycoming offer this as another amendment?

Mr. ARMSTRONG. Yes, sir. I desire to amend my amendment in this respect, and also to suggest another verbal alteration.

The CHAIRMAN. There is already an amendment to an amendment pending, and no additional amendment will at this time be in order. The gentleman can modify his amendment.

Mr. ARMSTRONG. Such is my intention.

The CHAIRMAN. The gentleman will state in what other particular he desires his amendment modified.

Mr. ARMSTRONG. I also desire to modify the amendment by striking out in the first line of the last paragraph, the word "said" and inserting the words "the register's office and such separate orphans'." That will make this sentence read: "All accounts filed in the register's office and such separate orphans' courts, &c."

Mr. EWING. While this proposition is better than the section originally reported by the Committee on the Judiciary, it is to my mind still unsatisfactory. It is attempting to hang on to that old absurdity of having the register and the orphans' court separate. I cannot see any earthly use for a register when we have a separate orphans' court. Why not, instead of saying that the register shall be *ex officio* clerk of the orphans' court, say that in counties where there is a separate orphans' court, the clerk of the orphans' court shall perform the duties of register? As this stands, I take it that an auditor's account would have to be filed in the register's office and then be certified over to the orphans' court just as it is now. Then you would have very nearly all the absurdities of the mixing up of the register as a separate thing from the orphans' court that we have now under our present system of an orphans' court, a register, and a register's court. This very complication is what I am anxious to avoid, and I do not think that this suggestion of the gentleman from Lycoming obviates the difficulty. For one, I would very much prefer that this first paragraph should be so changed as to read:

"A register's office for the probate of wills should be kept in each county where there is no separate orphans' court."

That is all that will be needed there. Then in the second clause, where it pro-



vides for judicial districts, I would so change it that it would read "in every county where the population shall exceed one hundred thousand." The "judicial districts" should be struck out.

Mr. ARMSTRONG. In what line?

Mr. EWING. In the first line of the second paragraph.

Mr. ARMSTRONG. No, sir.

Mr. EWING. Why should not that "county?"

Mr. ARMSTRONG. Because there are judicial districts, now created by law, and this language, as it stands, will be more specific.

Mr. EWING. Then I certainly object to the amendment—

The CHAIRMAN. The chair must remind the gentleman from Allegheny, that the modifications proposed by the gentleman from Lycoming, have not been read from the clerk's desk. The clerk will read the modifications.

The CLERK read the modifications as follow: Strike out the word "the," where it occurs the second time in the third paragraph, and insert the words "such separate;" then in the last paragraph strike out in the first line, the word "said" and insert the words "the register's office and such separate orphans'."

Mr. EWING. I think the whole amendment is subject to several objections. First, there is no earthly use for a register where you have a separate orphans' court, and where you have such a separate court the register's court is abolished. If the amendment read, "a register's office for the probate of wills and granting letters of administration shall be kept in each county where there is no separate orphans' court," or something to that effect, I should feel inclined to vote for it.

Then the third paragraph I would change so as to make it read that the clerk of the orphans' court should perform the ordinary duties of register, and you would thus avoid the absurdity of having this certification back from the register to the orphans' court, and from the orphans' court to the register.

Mr. TEMPLE. I sincerely hope that the committee of the whole will not vote upon this question until the gentleman from Allegheny (Mr. Ewing) has had time to offer the amendment which he has just indicated.

Mr. EWING. I have not the amendment in shape, and do not design to offer it now.

Mr. ARMSTRONG. Without going into question, I suggest it up on second reading.

The question is upon the gentleman from Allegheny's amendment.

The amendment was

now move to amend, by the first line of the second words "judicial district," and the words "city and coun-

Mr. ARMSTRONG. I call the attention of the committee of the whole to the fact that the words "county" and "judicial district" are both necessary. The paragraph now reads:

"In every judicial district wherein the population shall exceed two hundred thousand, the Legislature shall, and in any other county or judicial district, may establish a separate orphans' court."

The discretion of the Legislature is not limited; and if the gentleman from Allegheny wishes to add the words "city and county," it can be done.

Mr. EWING. I certainly hope that we shall not grant the Legislature any such discretion to make a separate orphans' court for a district composed of three or four counties.

Mr. ARMSTRONG. That is just what it is now. Under the discretion the Legislature have they may establish such separate orphans' court. It was urged upon the Committee on the Judiciary, certainly upon myself, that a separate orphans' court for a judicial district might, with great advantage, be left to the discretion of the Legislature.

Mr. TEMPLE. I would like to ask the chairman of the Committee on the Judiciary whether he intends, in any portion of this or any other section, to make provision for the auditing of accounts other than those filed in the orphans' court and register of wills' office.

Mr. ARMSTRONG. No, sir. It will not be germane to this section. I may state that that the same question arises with reference to the courts of common pleas. There are vast numbers of accounts of trustees and others that may require the attention of this Convention before we get through, and very properly so; but the subject

would not be a germane amendment to ment to this section.

Mr. BIDDLE. Do I understand the chairman of the Committee on the Judiciary to give us his assurance that he will introduce a section of that kind?

Mr. ARMSTRONG. I will introduce it.

Mr. CASSIDY. I want to know what is now the action of the section.

The CHAIRMAN. The Clerk read the section as it has been amended for information.

Mr. CASSIDY. Let him read the section.

The CLERK read the amended section, as follows:

"A register's office for the recording of wills and granting letters of administration, and an office for recording 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.

"In every judicial district wherein the population shall exceed two hundred thousand, the Legislature shall, and in any other county or judicial district, may establish a separate orphans' court, to consist of one or more judges who shall be learned in the law, and which court shall exercise all the jurisdiction and powers now vested in or which may hereafter be conferred upon the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such district or county in orphans' court proceedings, shall cease and determine.

"The register of wills shall be compensated by a salary to be fixed by law, and shall be *ex officio* clerk of such separate orphans' court, and subject to the direction of said court in all matters pertaining to his office. Assistant clerks may be appointed by the register, but only with the consent and approval of the court.

"All accounts filed in the register's office and such separate orphans' court shall be audited by the court without expense to parties, except where all parties in interest in 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."

Mr. CASSIDY. I desire to be informed by the chairman of the Committee on the Judiciary exactly what he means by auditing "by the court?" If he means that

in the city of Philadelphia the present orphans' court is to go through the labor of auditing and vouching all the accounts of the office, it is a physical impossibility. There is no sort of use in talking about it; it cannot be done. If it does mean that the court is to appoint officers to do it, which perhaps might be resorted to under that clause, I should like to know that, in order that I may vote advisably.

Mr. ARMSTRONG. As the section was originally suggested, it read that the accounts should "be audited by the judges and clerks" of the court. It was suggested that it would be better that the words "judges and courts thereof," which was the wording of the section, should be stricken out and the word "court" inserted, and that was done. Of course the court would act under these circumstances as they would under any others, by directing it to be done by the clerks. They do not necessarily do it themselves. The business of the courts cannot now be conducted, as far as these details are concerned, by the judges themselves, and they may appoint each such clerks as are sufficient to do the business.

Mr. CASSIDY. Or any body else.

Mr. ARMSTRONG. That would not cut up the auditing business, but gentlemen will observe that the auditing is to be done without expense to the parties.

Mr. CASSIDY. Of course the court may order others to do it if they will do it without expense.

Mr. BARTHOLOMEW. Under this section if adopted, would not a court have authority to delegate their power to others just as it is done now?

Mr. NEWLIN. No, sir.

Mr. BARTHOLOMEW. Certainly they would. What is the act of a man authorized by a court but the act of the court itself?

Mr. CASSIDY. I still do not understand how the difficulty is to be reached. I do not understand or see how this proposition remedies the evil. Certain it is that in the vast number of accounts not only filed in the orphans' court, but in the court of common pleas and in the register's office of this county, the court cannot do the work of registering and verifying the accounts as filed, with the clerks they now have, unless my friend from Lycoming intends to enlarge that jurisdiction to a degree which I am sure is not attempted. Therefore it seems to me that there is no remedy except in authorizing

the courts to appoint persons learned in the law to perform this labor of auditing in some other way. We might abolish the fee system that now exists, and fix salaries for this work; we might provide a *per diem* for doing it; but that the courts must be relieved of this labor by allowing them to appoint some of their officers, whether they be attorneys or clerks, to do it, is as clear to my mind as the sun at noonday.

Mr. TEMPLE. May I ask my colleague a question?

Mr. CASSIDY. Certainly.

Mr. TEMPLE. I desire to inquire of him whether he does not believe that it would be a saving to Philadelphia county and also to the State, if there were sufficient judges of the orphans' court or some other court to perform the duties of auditing?

Mr. CASSIDY. Not unless you establish such a number of judges as I am sure would be oppressive to the people. I am distinctly in favor of cutting up the present fee system in some way, but this does not get at it.

Mr. DARLINGTON. Does not the gentleman think it would be a great step toward reaching that end to provide that no accounts should be audited unless where exceptions are filed to them?

Mr. CASSIDY. That would certainly be a great stride toward the accomplishment of that end. As my friend from Chester (Mr. Darlington) has said, there never was any use for auditing accounts to which exceptions were not taken. I never knew any reason for referring such accounts for audit except such as has grown up here in this county and in other portions of the State. If it arbitrarily decided that nothing shall be referred to an auditor except accounts to which exception is taken, we should make a great stride toward cutting this up.

Mr. HAY. I should like to ask the gentleman from Philadelphia a question if I have his permission.

Mr. CASSIDY. Certainly.

Mr. HAY. I desire to ask the gentleman from Philadelphia, who is now upon the floor, for the purpose of obtaining information which no one is better able or more competent than himself to afford, whether, so far as he knows, the practice which now prevails in the city of Philadelphia of referring to auditors accounts to which no exceptions have been filed or are made, prevails in any other part of the Commonwealth? I do not know of any

such case, but am desirous that, if he or any other delegate possesses information that such practice exists elsewhere in the State, it may now be elicited for our instruction.

Mr. CASSIDY. I have no knowledge of such practice elsewhere. I am not capable of advising my friend from Allegheny on the subject. So far as I know, our county is an exception.

Mr. HAY. I only addressed the inquiry to the gentleman in order to make that suggestion.

Mr. CASSIDY. So far as I am advised, referring unexcepted accounts to auditors is an exceptional proceeding, one that I think there is no merit in, and I will go with my friend from Chester to remove that as far as his amendment goes, but that I suppose would be provided for by legislation. I do not see the absolute necessity of putting such a provision in the Constitution. There must be something left to the wisdom of those who are to legislate upon the subject of courts and the various other matters that cannot be put in the Constitution.

I only now at this point desire to call our friend's attention to the fact that this matter will not be helped by separate orphans' court nor by any other court. It will simply add the expense of one, two or three judges to the already enormous expense of the judiciary. There are minor matters of detail which you cannot be expected to make judges for. Certain it is that while this matter requires some legislation, I do not see that the section now submitted will remedy it.

Mr. NEWLIN. Mr. Chairman: I trust that this Convention will take such action as will secure the abolition of the audit system. I confess, that I have frequently been an auditor myself; and if the system is continued I suppose I shall be hereafter occasionally, but I think the system is wrong, not only by reason of the expense but on account of the intolerable delay which is caused by audits. The ordinary custom is this: It matters not whether there are exceptions to the account or not, the account is referred as a matter of course to an auditor. I have known accounts to be referred which were composed of half a dozen items, not one of which was excepted to by any party in interest. I desire to be explicit about this. I make no reflection upon any one. This is a system which has grown up without any fault on the part of the court or of the bar, the Legislature not provid-

ing the proper machinery by which this business can be done as it should be done by a probate court, or a court of that description by some other name, having a sufficient number of clerks to vouch accounts and perform the ordinary clerical work which is now done by the auditors. Then every account would be confirmed as of course, unless exceptions were filed to it, and those exceptions might themselves, by the court, be referred to some of their clerks, and when re-reported to the court could be heard as any other exceptions are to any other matters.

I take it that it is perfectly feasible to establish a court of a moderate number of judges with a sufficient number of clerks who could perform all this business at an inconsiderable cost in comparison with what is now paid, and with a rapidity that would be of great advantage to suitors. I take it, sir, that the principal objection and the most crying evil connected with the audit system now is the delay.

I am of counsel in a case which was referred to an auditor in 1866. The fund is some two hundred thousand dollars. In 1869, the auditor reported to the court of common pleas. That report remained subject to exceptions until November, 1871. It was then upon argument referred back to the auditor with directions to report to the court one single proposition, namely: whether a certain decision of the Supreme Court affected the rights of the parties who had appeared before him. Counsel appeared before the auditor and argued that question, and they have been from that day to this, over a year, trying to get a report from that auditor. This is but one instance out of thousands of the intolerable delay which is the inevitable result of this system.

I do trust that the Convention will take such action, either by providing for a probate court and allowing it to appoint sufficient clerks to do this auditing and then hear exceptions before the court, or by providing some other plan whereby the whole system will be wiped out.

Mr. TEMPLE. Mr. Chairman: I supposed after what Judge Woodward said upon this subject the other day, that the committee of the whole would adopt this section or one similar to it without any discussion whatever, and for my part I had not expected to take any part in this debate, after what he said so well and so truthfully.

In order to ascertain what the evil is, let us inquire for a moment the course pursued in the auditing of accounts. First, when an administrator or guardian or any other fiduciary person files an account in the register's office during the month of April, if you please, in the month of May the register gives notice that unless on or before the third Friday or third Saturday in that month exceptions be filed, the account will be presented to the orphans' court. At the expiration of that time the account is presented to the court and by the court referred to an auditor for settlement. He then advertises for a meeting to take place, never within three weeks, and sometimes not for two or three months, and then the account first gets before the auditor for the beginning of a process which some never see the end of.

I cannot agree with my colleague from Philadelphia (Mr. Cassidy) in this: that there cannot be a court established in the city of Philadelphia to get rid of this evil, because I take it that there is no delegate on this floor but what will admit that this is one of the greatest wrongs of which the people of this county of the Commonwealth have had to complain, and I use the word "wrong" in the broadest sense. I state to the gentlemen of this committee that Judge Woodward the other day made no exaggeration at all when he said that the system of auditing accounts in the city of Philadelphia was no less than the robbing of dead men's estates.

The present system is inequitable, and let us see why it is inequitable. I have taken the trouble to ascertain, and I find that in estates of two or three hundred thousand dollars it will cost say two hundred and fifty dollars or three hundred dollars, and probably five hundred dollars to settle up such an estate after the account is filed. In the case of an estate of five hundred dollars and six hundred dollars, and sometimes as low as two hundred and fifty dollars, it will take half that amount to settle up that small estate. If delegates will take just those two cases, if they will consider an estate of a quarter of a million of dollars costing two hundred and fifty or three hundred dollars to settle it up, and then take an estate of four, or five or six hundred dollars, costing never less than one hundred and fifty dollars, and sometimes two hundred dollars to settle it, they will see the gross iniquity there is about this mode of settling decedents'

estates. If everything else were equal, I claim that it would be much more equitable to have a court constituted in the city and county of Philadelphia for the purpose of settling these estates in order that they might be expeditiously; and if with cost to the parties, if we desired to get rid of the costs to the county or to the State, I find that if decedents' estates in Philadelphia were taxed one-quarter of one per cent. upon the gross amount, it would yield an abundance to sustain and support six judges composing an orphans' court.

There is no less than seventy-five thousand dollars a year paid out for the auditing of estates alone in the orphans' court, to say nothing about the vast number of estates audited in the other courts; but there is at least seventy thousand dollars to seventy-five thousand dollars a year paid out for the auditing of these estates. Under the present system it has to be done, there seems to be no escape from it. It has grown up to be a system. I do not know whether it is authorized by law or not; I do not know really whether there is any act of Assembly which requires an account, where there is no exception filed, to be audited. If it be true that there is no such law, it strikes me that where there are no exceptions filed to an account and everybody interested in the estate sees proper to let that account pass and to discharge the administrator and permit the fund to be distributed, there should be no kind of objection to it at all.

Mr. DARLINGTON. The gentleman will allow me to state that the law as applicable to Philadelphia makes it the duty of the court to examine the account or send it to auditors, and in practice they do not examine themselves but send everything.

Mr. TEMPLE. What would be the result if we had an orphans' court, if you please, with five or six judges, because it would be much cheaper in the long run to establish such a court and give them the exclusive right of auditing these accounts. What would be the course? I take it that of the accounts filed in the register's office now, if a court was sitting for the hearing of these accounts every day, fifty per centum of the accounts filed now by administrators, executors and guardians and others who file accounts in the register's office, would not be ex-

cepted to at all; but persons would walk in court and simply by the order of the court the account would be confirmed.

Then take the other fifty per centum of accounts where there was some difficulty in awarding distribution. I believe it would not occupy more than half the time of the court, and that the remainder of the time of that court could be devoted to other business.

I merely throw out these suggestions not desiring, as my colleague from Philadelphia has said, to cast any reflections upon anybody; but I do know that unless this convention does something in this direction or unless we get relief from the Legislature, which I very much doubt, the people will not be satisfied. I will state further that so far as my knowledge goes, I have talked with some of the judges on this subject and they really desire some course of this kind to be pursued. It is onerous on our judges, it is an onerous duty to be performed; they want to get rid of it, and I think for the interest of decedents' estates and for the interest of all parties concerned there ought to be some provision of this kind inserted in the Constitution. We cannot get it from the Legislature. Gentlemen may ask why we do not get it from the Legislature. We have now a legislative enactment which is what you may think sufficient, but it has grown up into a system that all accounts should be referred to auditors and that then they remain in the hands of auditors for sometimes an indefinite period.

I was told—and with this expression I will close—I was told by a reputable lawyer on this floor a few days ago that a very distinguished gentleman in the city of Philadelphia, within the last two or three weeks had received a fee for auditing one estate of \$2,400, a gentleman of marked distinction in this Commonwealth. I say I was told that by a gentleman of probity and truth, a member of the bar of Philadelphia on this floor. I am content to leave the matter with the committee.

The CHAIRMAN. The question is on the amendment of the gentleman from Lycoming to the amendment, to strike out the word "the" in the second line of the second paragraph and insert "such separate," and strike out "said" in the first line of the last paragraph and insert the words "the register's office and such separate orphans' court."

The amendment on the amendment was agreed to, there being on a division, ayes forty, noes three.

Mr. ALRICKS. For my part, Mr. Chairman, I am entirely satisfied with the report of the committee as it now stands. I have no doubt there is great cause for complaint in the city of Philadelphia, but probably it arises from the fact that the business is so great. The gentleman from Philadelphia (Mr. Temple) has spoken of an instance in which \$2,400 was paid for auditing an estate. It may be possible that the auditor was not over-paid at that. But the statute contemplates that the register of wills shall in every case examine all the vouchers and compare them with the account and see that they are correct, and proper credits have been had. Then the law imposes upon the court the duty also to see that the account is correct; and it very often happens that there are matters in that account, even where there are no exceptions, that may create embarrassment upon the part of the court, and the court will deem it necessary to appoint an auditor, although the law never contemplated that the court should appoint an auditor in the absence of any exceptions to the account.

It may be, as the gentleman from Philadelphia (Mr. Cassidy) informs us, that if there was a judge of the orphans' court in the city of Philadelphia, he could not perform the duty that would be cast upon him by law and examine every account to be passed in his court. If such be the fact, it will only be necessary to increase the force of judges. It only shows the propriety of this provision in our Constitution, that there ought to be a separate judge of the orphans' court. If we abolish the register's court, and if the judges of the court of common pleas, who are also judges of the orphans' court, have more business than they can perform, it is perfectly proper that a provision should be placed in the Constitution for the appointment of another officer to relieve that court in the performance of that duty.

Some gentlemen have complained that we ought not to have a register if we have a clerk of orphans' court. They might as well say, if you have an axe what is the use of a handle? I can see that it would be perfectly proper to have a clerk of the orphans' court to discharge that branch of the duty assigned to that court, and at the same time to have a register who must prove all the wills that are brought for-

ward and are to be probated. There must necessarily be a register. Therefore, I concede the propriety of the officers who are named in these provisions of the Constitution. The only difficulty in my mind with regard to the city of Philadelphia, (because there is no trouble in the country,) is as to the necessary force, and it will be for the Legislature, I presume, to increase that force and give them sufficient judges to perform the duties imposed upon them.

There is another matter to which I wish to direct the attention of the House, and that is this: Every day there are questions of fact disputed in the register's court or in the orphans' court. Those questions of fact ought necessarily to be tried, and must be tried, before a jury of the country. Then the question arises, who is to preside at that court? Should the judge of the orphans' court alone preside, or should the judge of the common pleas be associated with him? In my opinion it is the duty of this Convention, in framing this organic law, to provide that the judge of the court of common pleas shall have co-ordinate jurisdiction with the judge of the orphans' court, and that the matter, wherever there is a dispute of fact, shall be tried before a jury of the country; it may be with regard to the insanity of a testator, or it may be upon any other question. We all agree that all questions of fact must be settled by a jury of the country. If such is the case should not the judge of the court of common pleas preside at the trial, and should he not give the charge to the jury and determine all questions of evidence? Therefore, for the purpose of presenting this question to the House, I offer the following amendment to the amendment, to be inserted at the end of the second paragraph:

"But all disputed facts shall be tried before a jury, and then the law judge of the common pleas court shall preside at such trial and have co-ordinate jurisdiction."

Mr. ARMSTRONG. It follows as a matter of course, *ex necessitate*, that very much of this filling out of detail must be left to the Legislature. The gentleman from Philadelphia (Mr. Cassidy) hit the thing precisely when he said that there is much of detail required to perfect this system that we cannot put in the Constitution. We live under a judicial system which is now composed far more largely of acts of Assembly than it is of Consti-

tution; and it must always be so. We have indicated here what would be a proper course. Let the mode of its operation be within the jurisdiction of the Legislature. We cannot avoid it, and I believe we have sufficiently indicated the foundation upon which the Legislature may build, and they will perfect it.

Mr. DARLINGTON. I merely wish to suggest to the gentleman from Dauphin, (Mr. Alricks,) that the orphans' court is provided with no machinery of juries, and if the common pleas judges are to go there to try the cause, they would be at fault. We had better let the thing take its ordinary course as it does now, by an issue to the common pleas, where they have the machinery to try the cause.

Mr. ALRICKS. Put in a provision to that effect.

The amendment to the amendment was rejected.

Mr. EWING. In order to test the views of the Convention in regard to and abolishing the office of register and vesting his duties in the clerk of the orphans' court, I offer the following amendment as a substitute for the first paragraph of the section:

"The register's court and the office of register are hereby abolished; and until otherwise provided by law, the orphans' court shall exercise the jurisdiction and powers now vested in the register's court, and the duties of the register shall be performed by the clerk of the orphans' court."

I will say in regard to this amendment that I know it meets the views of some gentlemen here. Certainly where there is a separate orphans' court we do not want a register; we do not want anything of that machinery. I cannot see of what use it is in any county, or why they should not be all together. If this amendment be adopted, then the second paragraph would come in with very little change, and the last one could be adopted substantially as it is.

Mr. D. W. PATTERSON. I was about to offer an amendment to confine the abolishment of the register's court to those districts having a population of two hundred thousand, leaving it stand in the others, and I designed introducing it after the word "court" in the second sentence of the first paragraph, so as to make it read: "The register's court in counties or judicial districts having the population hereinafter mentioned is hereby abolished;" leaving the register's court to

stand in other counties until we arrive at this population of two hundred thousand.

The original substitute of the chairman of the committee proposes to abolish the register's court all over the Commonwealth, whereas the same judges who sit as common pleas judges, sit as orphans' court judges and as register's court judges, with the addition of the register if there is any probate of a will or *caveat* to be heard. It seems to me that it would be better to abolish the register's court in the large districts in which they wish to establish this new orphans' court and not abolish it generally. I do not want to see it abolished generally. There is no complaint in our county about it. We have separate offices and they are both crowded with papers, and the register's as well as the orphans' court have two clerks most of the time. In this city I suppose they have a great many more. Why not leave them separate when there is sufficient business to pay a clerk and an officer for each of those courts?

Mr. DARLINGTON. I ask the gentleman, was there ever a case in his recollection in which the register sitting in a register's court was of any kind of use?

Mr. D. W. PATTERSON. The register's court does no harm. It does not occupy any time. The register is there to attend to the office, and he sits on the bench of the court while they are granting this feigned issue. He takes the advice of the law judges. He is there as an officer, and ought to be there to attend to the business in his office. I hope the pending amendment will be voted down, unless my friend from Allegheny withdraws it and permits me to offer the one I have suggested, which will abolish the register's court in large districts, leaving it stand in other counties of the Commonwealth until we grow up to a population of two hundred thousand, and then it will abolish it everywhere.

The CHAIRMAN. The question is on the amendment to the amendment proposed by the gentleman from Allegheny (Mr. Ewing.)

The amendment to the amendment was rejected, there being, on a division: Ayes, thirteen; less than a majority of a quorum.

Mr. J. M. BAILEY. I do not think the words "and an office for recording of deeds," in the second line, have any place in the article on the judiciary, especially in that part of it which refers to the orphans' court. I therefore move further

to amend the section, by striking out the words "and an office for recording of deeds." An article to be reported or which has been reported by the Committee on County, Township and Borough Officers will provide for the recording of deeds. That is sufficient, and that is where it should be. I therefore move to strike it out in the present section.

Mr. ARMSTRONG. When that report is made and satisfactory provision is made on this subject, there will be no objection to striking it out here, because it will not be necessary to insert it in this article; but until it is made, it might as well be left here, and, if necessary, it can be struck out hereafter.

Mr. J. M. BAILEY. It strikes me we might just as well provide here for all county officers, the county treasurer and the county sheriff, as for the recorder of deeds. It has no connection at all with the judiciary system of the Commonwealth, and is entirely out of place in this section.

Mr. ARMSTRONG. It is in the present Constitution. In that respect it is not changed. That is why it appears here.

The CHAIRMAN. The question is on the amendment to the amendment offered by the gentleman from Huntingdon (Mr. J. M. Bailey.)

The amendment to the amendment was rejected, there being, on a division: Ayes, twenty-four; less than a majority of a quorum.

Mr. DARLINGTON. I move to amend, in the last paragraph, by inserting, after the word "accounts," the words "to which exception may be," providing merely, you will observe, that all accounts to which exceptions may be filed shall be audited, but none others.

Mr. ARMSTRONG. If the gentleman will add that to the end of the amendment which was inserted I shall have no objection.

Mr. DARLINGTON. Then it would be inconsistent.

Mr. TEMPLE. I should like to ask the gentleman what becomes of the accounts where there have been no exceptions filed?

Mr. C. A. BLACK. They are affirmed, as a matter of course.

Mr. ARMSTRONG. The amendment is open now to a criticism, perhaps, of another kind. Does it not leave the matter in such a condition that where no exceptions are filed, the accounts might be referred to auditors?

Mr. TEMPLE. Certainly. That is the question I asked.

Mr. ARMSTRONG. I think it would be well not to pass the amendment suggested now, and after we get this section in due form and printed, and come to compare it with the other sections and articles of the Constitution, we can amend it on second reading, if necessary. I think, for the present, the amendment ought not to pass, because it is certainly open to that criticism.

Mr. MACCONNELL. I hope that the amendment will not be adopted for this reason: There are distributions of money to be made as well as the adjustment of accounts. Now, in the cases of distributions there are usually no exceptions filed; but after the account of the administrator, or executor, or guardian, as the case may be, has been confirmed, application is made to the court that there are difficulties connected with the distribution, disputed claims, perhaps, of heirs or legatees, where it is impossible for the accountant with any safety to make the distribution; he can only make it under the judgment of the court; and in that case it is an absolute necessity that there should be a decision of the court upon it. The practice has been to appoint auditors to do that just as it has been to appoint auditors to settle accounts, sometimes one, sometimes more, as the case may be; but if you adopt the amendment of the gentleman from Chester, you will prevent that. It is just as important that that should be done by the court or its clerks as that the technical auditing should be done. I hope the amendment will not be adopted.

Mr. TEMPLE. I understood the gentleman from Chester desired to withdraw his amendment?

The CHAIRMAN. Does the delegate from Chester withdraw his amendment?

Mr. DARLINGTON. Yes, sir; and in lieu of it I move to strike out the last paragraph and insert:

"No accounts shall be referred to auditors unless exceptions are filed thereto."

Mr. ARMSTRONG. All that is so distinctly in the province of the Legislature that it seems to me it is only encumbering the Constitution to insert it here. It is unnecessary.

Mr. DARLINGTON. I agree entirely that the whole thing is in the province of the Legislature.

Mr. ARMSTRONG. Then I am sure I cannot understand why the gentleman so



earnestly advocated the adoption of the amendment, when the committee originally reported that the whole subject was proper for legislation and omitted it in their report.

Mr. DARLINGTON. If that is the views of the chairman, to let it all go the Legislature, I am perfectly satisfied. There is already in the Constitution a provision that the Legislature may establish such other courts as they may see fit and prescribe their duties. There is no trouble about it.

Mr. ARMSTRONG. I call the attention of the committee to another fact. There is a provision, which will be reached in a few minutes I trust, which requires the Supreme Court to provide rules of practice, which shall be uniform throughout the State, and which will obviate very many of the practical difficulties and inconveniences that have been complained of.

Mr. TEMPLE. I do not suppose for a moment that the distinguished delegate from Chester has been entertaining us, not only this afternoon, but a previous day, when a proposition of this sort was up, simply for the purpose of killing it; but really one might infer from his remarks when last on the floor that he had been advocating this section simply for the purpose of killing it off.

Mr. DARLINGTON. I beg to explain.

Mr. TEMPLE. Nobody made a more earnest appeal for the adoption of this section than the distinguished delegate from Chester. Now he suggests—

Mr. DARLINGTON. The gentleman will allow me to explain that my advocacy was of the amendment of Judge Woodward, a different thing altogether. I have only endeavored to get this into shape since that was defeated.

Mr. TEMPLE. This embodies the same thing.

The CHAIRMAN. The gentleman from Philadelphia has no right to impugn the motives of members.

Mr. TEMPLE. I do not mean anything of the kind. It strikes me that this cannot be safely left to the Legislature; and that is not only the opinion of those who have spoken upon it on this floor, but it is the opinion of all persons. I take it, we cannot get redress from the Legislature, and I certainly think that the delegates upon this floor are not going, simply because of the amendments which have been attached to this proposition, to vote it out

of the house altogether. Certainly they are not going to treat it in that way.

I cannot see any objection to placing a clause in the Constitution which shall say that decedents' estates shall be audited without expense to the parties. If that is done, that embodies the whole principle contained in this clause. If we adopt this section, which simply says that decedents' estates shall be audited and settled without expense to the parties, that is all we desire. Another feature which probably gentlemen have not thought about is that decedents' estates are already taxed to the extent of five per cent. in the shape of a collateral inheritance tax, where the fund is not distributed directly to issue. I think that is another reason why decedents' estates should be settled without expense. But I am sure of one thing, and that is, that if this clause or something like it is not adopted, it will not give satisfaction to the people or to the courts.

Mr. CORBETT. Mr. Chairman: If this section applied to the city of Philadelphia alone, I might vote for it. As applied to the city of Pittsburg and the county of Allegheny, if the members from that county desire it, I should have no objection to voting for it. But as it now stands, I shall vote against the whole section. It gives the power to the Legislature to create courts to be called orphans' courts in any district in this State. To that I am entirely opposed, and I shall vote strenuously against it. Instead of giving us the relief which we need, more judicial force and smaller districts, here is a class of courts to be created and the Legislature is to be given the power to create them all over the State. To this I am entirely opposed.

The CHAIRMAN. The question is on the amendment of the gentleman from Chester, to the amendment.

The amendment to the amendment was rejected.

Mr. EWING. Mr. Chairman: I now move to strike out the words "judicial district" in the first line of the second paragraph, and insert "county." I hope the chairman of the judiciary and the friends of this proposition will consent to that.

Mr. CORBETT. Make it "city and county."

Mr. EWING. Well, have it "city and county," and not have the whole section killed, because I find a number of gentlemen here opposed to having this separate orphans' court in a district composed of

three or four counties. If I were in such a district, I should be very much opposed to it.

Mr. DARLINGTON. I hope that the suggestion of the gentleman from Allegheny will be heeded. All judicial districts where the population exceeds one hundred thousand would include our judicial district, and we certainly do not want a separate orphans' court there. I am told the number is two hundred thousand. Then it would not touch us.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. Ewing) to the amendment.

The amendment to the amendment was agreed to, there being, on a division, ayes thirty-four, noes twenty-six.

Mr. COCHRAN. I offer the following substitute for the section—

The CHAIRMAN. The motion is to strike out not only the amendment of the gentleman from Lycoming, but the whole section. That would not be in order now.

Mr. COCHRAN. I want this as a substitute for the whole section.

Mr. ARMSTRONG. Let it be read for information.

The CHAIRMAN. It will be read by the Clerk.

The CLERK read as follows:

"There shall be established in the city of Philadelphia and in every county of this State containing a population of thirty thousand souls and upwards, a probate court, of which there shall be one judge learned in the law, whose term of office shall be ten years, if he shall so long behave himself well, and who shall be subject to removal for the same causes and in the same manner as judges of the court of common pleas. A judge, and also a clerk of said probate court, shall be elected in each county in which said court is authorized by this section, at the first general election held in this Commonwealth after the adoption of this amended Constitution. The term of office of said clerk shall be five years, but he shall be removed by the judge whenever it shall be judicially made to appear, to his satisfaction, that said clerk has been guilty of extortion or any other malfeasance in office, and in the event of such removal being made, the vacancy shall be supplied by an appointment of a successor, to be made by said judge, to continue until the expiration of ten days after the next ensuing general election, at which a successor to said clerk shall be chosen for the full term of five years. Said judge and

clerk shall each be commissioned by the Governor, and the probate courts shall be organized and go into operation on the first Monday of December succeeding their first election.

"Each probate court shall be a court of record, having a seal, bearing for a device the coat of arms of this Commonwealth, encircled by the words, 'Probate Court of ——— county, Pennsylvania.' The jurisdiction of said court shall extend to all matters and cases now acted upon by, and committed to the register of wills, the register's court, and the orphans' court, in the respective county in which it shall be established by virtue of this section, and shall have the power to send, certify and direct issues of fact to be tried in the court of common pleas, as such issues may now be sent, certified and directed by the register, registers' court and orphans' court to the said court. The judge of said probate court shall be entitled to receive from the treasurer of his proper county, in quarter-yearly payments, such salary, not less than two thousand five hundred dollars annually, as may be fixed and appointed by the Legislature, and which shall not be diminished during his continuance in office. The clerk of such probate court shall receive such salary as the Legislature shall direct, to be paid out of the funds of the proper county. All fees now by law payable to the register of wills and clerk of the orphans' court shall be collected by the clerk of said court, who shall give bond in such sum as the Legislature shall appoint, with such security as one of the judges of the superior court shall approve, conditioned for the faithful and punctual payment of all such fees collected, or that ought to have been collected by him, every three months, into the county treasury; and shall not be entitled to receive any part of his salary, until such payment shall have been made."

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

The motion was not agreed to.

The CHAIRMAN. The question is on the amendment of the gentleman from Lycoming, as a substitute for the original section.

Mr. D. W. PATTERSON. I move to amend by inserting words after the word "court" in the second line, first paragraph. It read first, "the register's court in counties or judicial districts;" and

now, according to the amendment adopted on the motion of the gentleman from the city of Pittsburg, it reads, "cities and counties." I move to insert after "court," in the first paragraph, the words "in cities and counties having the population hereinafter mentioned;" and also to insert at the end of the paragraph the words "of such cities and counties."

The amendment to the amendment was rejected.

Mr. CORBETT. Mr. Chairman: I move to strike out in the second paragraph the words "judicial district" where they occur the second time. The gentleman from Allegheny, (Mr. Ewing,) by his amendment moves to strike out, where they first occurred, the words "judicial district," and insert the words "city and county." I move to strike out the words "judicial district" where they occur the second time.

Mr. D. W. PATTERSON. And insert "cities?"

Mr. CORBETT. No, sir, it does not need any insertion to make it read right.

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is upon the amendment as amended.

Mr. COCHRAN. Is it not on the section?

The CHAIRMAN. No, sir, it is on the amendment originally proposed by the gentleman from Lycoming.

Mr. TEMPLE. Let it be read.

The CHAIRMAN. The Clerk will read the amendment as amended.

Mr. ARMSTRONG. I suggest that we had better take a vote on the amendment, and when it comes to a vote on the section then the gentleman from York can offer his substitute.

The CHAIRMAN. The gentleman from Philadelphia calls for the reading of the amendment, and it will be read.

Mr. TEMPLE. Let the whole section, as it would be amended, be read.

The CLERK read the amendment as amended, as follows:

"A register's office for the probate of wills and granting letters of administration, and an office for 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.

"In every city and county wherein the population shall exceed two hundred thousand, the Legislature shall, and in any other city or county may, establish a

separate orphans' court, to consist of one or more judges who shall be learned in the law, and which court shall exercise all the jurisdiction and powers now vested in, or which may hereafter be conferred upon the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such city or county in orphans' court proceedings, shall cease and determine.

"The register of wills shall be compensated by a salary to be fixed by law, and shall be *ex officio* clerk of such separate orphans' court, and subject to the direction of said court in all matters pertaining to his office. Assistant clerks may be appointed by the register, but only with the consent and approval of the court.

"All accounts filed in the register's office and such separate orphans' court shall be audited by the court without expense to parties, except where all parties in interest in 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."

Mr. J. M. BAILEY. For the purpose of saving time and preventing unnecessary amendments being voted upon, I move to amend, by striking out all after the word "county," in the first paragraph, so that it will leave this section stand precisely in the language of the present Constitution:

"A register's office for the probate of wills and granting letters of administration, and an office for recording of deeds, shall be kept in each county."

On the question of agreeing to this amendment to the amendment, a division was called, which resulted: Twenty-six in the affirmative.

The CHAIRMAN. There is not a majority of a quorum voting in the affirmative, and the amendment is not agreed to.

Mr. HARRY WHITE. I ask that the negative vote be taken.

The CHAIRMAN. Those in the negative will rise.

Those voting in the negative were fifteen.

The CHAIRMAN. There is not a quorum voting.

Mr. HARRY WHITE. I ask for a count of the House.

A count of the House was made, and the Clerk reported sixty-four members present.

The CHAIRMAN. There is not a quorum present.

Mr. WHERRY. I move that the Sergeant-at-Arms be sent after the Philadelphia members.

Mr. COCHRAN. I move that the committee of the whole do now rise, report progress, and ask leave to sit again.

The motion was rejected.

Mr. MANN. Mr. Chairman: I rise to a question of order. When it appears that there is not a quorum present in the House, the committee of the whole rises without a vote.

The CLERK announced that there were thirty-eight members present.

The CHAIRMAN. The point of order of the gentleman from Potter is well taken, but there is now a quorum present. The question is upon the amendment offered by the gentleman from Huntingdon to the amendment.

Mr. MANN. I desire to say to the gentleman from Huntingdon that if he will accept that part of this section which provides that accounts shall be audited without expense to the parties in interest, I will vote for his proposition. I certainly think, after the discussion we have had here upon the abuse of the auditor's system in Philadelphia, that some provision ought to be made for saving the estate of a decedent from the charges of these auditors. That part of the section is as important as the first.

Mr. J. M. BAILEY. I should certainly be very glad if the auditing could be done without expense, but that is entirely impracticable. The auditing will always be attended with expense unless you provide that it shall be done by some public officer. We cannot provide in this section that if auditors be appointed, the auditing shall be done without expense to the parties. It will be pure nonsense unless you provide officers to do it.

Mr. MANN. The gentleman does not understand my meaning. I do not mean that when auditors shall be appointed there shall be no expense. I mean that when there is no necessity for an auditor that the estates of decedents should be settled by the officers of the orphans' court, without the intervention of an auditor; that is provided for in the last paragraph.

Mr. J. M. BAILEY. It was stated upon this floor by a gentleman well informed upon this subject, that it is a physical impossibility for the officers of the orphans' court to perform the duties now performed by auditors.

Mr. MANN. If the gentleman will allow me to explain, it is very easy for the Legislature to provide that the court or its officers may audit these accounts. If this last paragraph be adopted, the Legislature will make such a provision, because it will be imperatively required that they should do so. And unless that is done, I hope the committee of the whole will refuse to adopt the motion of the gentleman from Huntingdon.

Mr. J. M. BAILEY. I will state to the gentleman from Potter that the purpose of my amendment is to leave the present Constitution exactly as it stands, and the auditing has nothing to do with the office of register of wills, which is all that my amendment provides for. If the gentleman wants a constitutional restriction upon auditing, let it be inserted in the section. It can have no connection with the language of the brief paragraph in the present Constitution. All that is contained in that paragraph is:

"A register's office for the probate of wills and granting letters of administration, and an office for recording of deeds shall be kept in each county."

That has no connection at all with the auditing of accounts in the orphans' court, and this is not the place to insert a restriction upon the subject of auditing, even if the Convention should so decide.

Mr. TURRELL. Mr. Chairman: It is manifest from the statements made by delegates from Philadelphia, that in this city the system of auditor's fees is one which has been greatly abused, and it certainly seems to require at our hands careful attention. I am very glad to know that no such abuse exists, or has existed, in the country; and I now only desire, in answer to the remarks of the gentleman from Potter, (Mr. Mann,) and the gentlemen from Philadelphia, to read an act of Assembly in relation to the subject of audits passed on as recent a date as April 14, 1870. It will be seen from the language of this act, that if there has been the abuse upon this subject of audits, that gentlemen from this city would have us believe, the remedy has been and is in their own hands. The act says:

"Wherever auditors are appointed by the orphans' court, court of common pleas, or district court of the city and county of Philadelphia, in cases where the balance for distribution amounts to one thousand dollars and upwards, they shall each be entitled to receive the sum of ten dollars for each day they shall neces-

sarily attend to the duties of their appointment, not to exceed five days, and the additional sum of twenty-five dollars for making the report; and in cases where the balance for distribution shall be less than one thousand dollars, they shall each be entitled to receive one-half the above rates as compensation for their services: *Provided*, That in important cases, or cause shown, the court may make a decree or order, allowing such additional compensation as they may deem proper."

To this the editor of Purdon's Digest makes the following note:

"This beneficial law has almost become a dead letter; it is true, the court has announced its determination to enforce it in all cases, on exceptions filed.—*Milligan's Estate*, 3 *Legal Gazette*, 202. But few of the younger members of the bar have the independence to except to the extortion of an auditor, who is the appointee of the court, and perhaps related to some of the judges, at the risk of incurring the displeasure of the bench. The court alone can enforce the law, by examining the report, and ascertaining that no illegal charge has been made."

Now, as has been stated in relation to some other matters here, it seems that so far as that difficulty is concerned, if the young members of the bar had more pluck, and the judges would discharge their duties properly, this evil to which so much objection has been made, would be corrected. I simply wished to call the attention of those gentlemen to it.

Mr. ARMSTRONG. The amendment proposed by the gentleman would leave the Constitution just as it stands; and yet upon all hands there has been great complaint of enormous abuses which even an act of Assembly, under the facts as they exist, has not been adequate to correct. My own judgment was, and I believe it is unchanged, that this section as originally reported by the committee was as safely guarded, and as well devised, as anything that we are likely to get; but when Judge Woodward, a few days since, proposed his amendment, and spoke of the abuses of the auditing system in this city, he seemed to take the Convention by a sort of whirlwind; everybody wanted it; and I observe that those who are opposing the substance now wanted it then.

In accordance with what I supposed to be the expressed desire of the Convention in order to meet its view, I drew this amendment and have submitted it.

I would rather now that all these amendments were voted down and the section, as reported by the committee, left to stand as it is, for it is carefully guarded and, I believe, entirely sufficient for all the emergencies of the case. But it was supposed that there was no practicable mode of reaching the abuses of the auditing system unless it were put into the Constitution. I have no complaint of that and am perfectly willing it shall be put in if such be the sense of the Convention; but it does occur to me that it is not wise that we shall go back now to the Constitution just as it stands, because we ought to provide a mode by which the orphans' court jurisdiction may be extended, and the common pleas jurisdiction restricted to the same extent.

I am not tenacious about it. I would like the section to be passed upon, and I will here take occasion to say that which is purely personal to myself. I have just received a dispatch, the exceeding great urgency of which compels me to leave to-morrow. When the Convention resumes its session I shall ask leave of absence from to-morrow perhaps for the whole of next week. In the mean time I trust that this report will go through. Of course I do not desire to intimate that my absence should in the least degree interfere with the further consideration of the report in committee. It is with extremely great regret that I feel under the necessity of asking for such leave, but the dispatch which I have just received leaves me no alternative. I am constrained to go. I should be glad if this section could be disposed of this evening.

Mr. D. N. WHITE. Mr. Chairman: I hope the amendment now before the committee will not be adopted. Gentlemen should recollect that all the property of the people of this State passes about once in thirty years, and an immense amount of money value has to be passed through this office. It has become a matter of so much importance that we should have courts whose special business it is to attend to these vast interests and guard the interests of widows, orphans and minors, exposed, as they are, to so many assailants.

I hope the amendment will not be adopted, but that the section will be carried, or something like it, so that we may have probate courts, say in every county where a large amount of business is done, as is done in this county, in Allegheny county, and some other counties in

the State. The courts as now constituted give very little time to orphans' court business and it is left to registers elected, frequently unfitted for their offices. Anybody who is politician enough to get nominated is placed in charge of these vast estates, and we have heard of the stupendous abuses that have been mentioned here to-day.

Shall we go home after coming here to make a reformed Constitution, and not do anything to correct these evils? I hope the amendment will not be carried.

The CHAIRMAN. The question is on the amendment proposed by the gentleman from Huntingdon to the amendment.

Mr. WALKER. I have taken a deep interest in the different amendments that have been offered. At first I felt disposed to support the amendment presented by the chairman of the committee. It has been, however, so amended that I cannot do so. My present intention is to vote against the section in the shape that it is and bring us back to the section as originally presented to the Convention by the committee. I believe it to be decidedly better than the amendment that we are now considering. For that reason and that alone, I will vote against the amendment of the gentleman to my left, (Mr. J. M. Bailey,) and vote against the section, and vote, as at present informed, in favor of the original section as presented by the committee.

The CHAIRMAN. The question is on the amendment of the gentleman from Huntingdon to the amendment.

The amendment to the amendment was rejected, less than a majority of a quorum voting for it.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Lycoming, as amended.

Mr. CORBETT. I move to strike out in the first line of the second paragraph the words "district or," so as to correspond with the amendments already adopted.

The amendment was agreed to.

Mr. COCHRAN. I move to amend, by striking out all the first part of the amendment and inserting the following, leaving in the last paragraph :

"There shall be established in the city of Philadelphia, and in every county of this State, containing a population of thirty thousand souls and upwards, a probate court, of which there shall be one judge learned in the law, whose term of office shall be ten years, if he shall so long be-

have himself well, and who shall be subject to removal for the same causes and in the same manner as judges of the court of common pleas. A judge, and also a clerk of said probate court, shall be elected in each county in which said court is authorized by this section, at the first general election held in this Commonwealth after the adoption of this amended Constitution. The term of office of said clerk shall be five years, but he shall be removed by the judge whenever it shall be judicially made to appear, to his satisfaction, that said clerk has been guilty of extortion or any other malfeasance in office, and in the event of such removal being made, the vacancy shall be supplied by appointment of a successor, to be made by said judge, to continue until the expiration of ten days after the next ensuing general election, at which a successor to said clerk shall be chosen for the full term of five years. Said judge and clerk shall each be commissioned by the Governor, and the probate courts shall be organized and go into operation on the first Monday of December succeeding their first election.

"Each probate court shall be a court of record, having a seal, bearing for a device the coat of arms of this Commonwealth, encircled by the words, "Probate Court of ——— county, Pennsylvania." The jurisdiction of said court shall extend to all matters and cases now acted upon by, and committed to the register of wills, the registers' court, and the orphans' court, in the respective county in which it shall be established by virtue of this section, and shall have the power to send, certify and direct issues of fact to be tried in the court of common pleas as such issues may now be sent, certified and directed by the register, register's court and orphans' court to the said court. The judge of said probate court shall be entitled to receive from the treasurer of his proper county, in quarter-yearly payments, such salary, not less than two thousand five hundred dollars annually, as may be fixed and appointed by the Legislature, and which shall not be diminished during his continuance in office. The clerk of such probate court shall receive such salary as the Legislature shall direct, to be paid out of the funds of the proper county. All fees now by law payable to the register of wills and clerk of the orphans' court shall be collected by the clerk of said court, who shall give bond in such sum as the Legislature shall

appoint, with such security as one of the judges of the court of common pleas shall approve, conditioned for the faithful and punctual payment of all such fees collected, or that ought to have been collected by him, every three months, into the county treasury; and shall not be entitled to receive any part of his salary, until such payment shall have been made."

The CHAIRMAN. The gentleman from York moves to amend as indicated.

Mr COCHRAN. I will merely state that this measure about probate courts in the counties is one which I have earnestly considered in my own mind, and I think that it is a beneficial measure. I offered this proposition in substance in the form of a resolution when the Convention was in session at Harrisburg, and I renew it now because I believe that the proposition is right and will work well. It proposes the erection of a probate court in every county in the State where the population amounts to 30,000 and upwards; but I am not particular as to the limit.

That probate court is to be composed of a judge and a clerk, and their salaries are to be paid out of the county treasury. I believe that will be not only beneficial but economical. I believe that the fees now paid into the register's office and into the office of clerk of the orphans' court, if paid into the county treasury would more than pay the expense of a probate court in a county of any considerable population.

The benefit of this probate court so called would be that all the business now done by the register and the register's court and the orphans' court would be done in the probate court, and this court would have power to send issues into the court of common pleas to try questions of fact, as the register's court and orphans' court can do now; and there could be appeals taken from the probate court directly to the Supreme Court, and in that way the settlements of the estates of decedents would be facilitated and all the work of the inferior courts would be done by a single court instead of, as is often the case now, passing through three: first, the register, for he is a judge in contemplation of law and acts judicially, next the register's court, and next the orphans' court—and that orphans' court sometimes doubled up by the addition of auditors. Here is one court that would take hold of the matter from the time application is made for letters of administration or for the probate of a will and transact all that

business, the court itself doing the work of auditors.

I do not want to enlarge upon this matter, because I know that the committee is not in a condition to listen patiently to discussion. I merely state the proposition. I believe it to be right. I shall vote for it myself. Whether it gets another vote or not, I do not undertake to say.

Mr. ARMSTRONG. This again brings up the idea of establishing courts on the basis of population. To establish a probate court or an orphans' court with separate and distinct jurisdiction, on a basis of thirty thousand inhabitants, would be to establish a court with nothing to do as I think. I think that it is insufficient, and that it is far better to leave it to the Legislature than to establish it on such an insufficient and uncertain basis.

Mr. BARTHOLOMEW. I move that the committee now rise, report progress, and ask leave to sit again. There is no quorum present I think. I have counted them myself, and there are but sixty-four members here.

The CHAIRMAN. The question is on the motion of the gentleman from Schuylkill.

The motion was not agreed to, less than a majority of a quorum voting therefor.

Mr. BARTHOLOMEW. I call for the negative vote in order to ascertain whether a quorum is present.

The question being taken again there were on a division ayes thirty-six, noes forty-three. So the motion was not agreed to.

Mr. TURRELL. I move to further amend by taking part of section twenty-two, as reported, which I will read for information.

The CHAIRMAN. Does the gentleman propose to amend the amendment of the gentleman from York (Mr. Cochran?)

Mr. TURRELL. Yes, sir; by striking out all that precedes it and inserting this:

"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"—

That can be changed to "two hundred thousand" if gentlemen desire—

"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 jurisdiction and powers to be exercised by the orphans' court of such county."

The CHAIRMAN. The Chair will inform the gentleman from Susquehanna that his proposition is not now in order. There is an amendment to an amendment pending.

Mr. TURRELL. I thought the Chair stated that the question was on the amendment of the gentleman from York.

The CHAIRMAN. It is, but the amendment of the gentleman from York is an amendment to that offered by the gentleman from Lycoming.

The amendment to the amendment was rejected.

Mr. TURRELL. Now I offer this amendment as a substitute for the whole section:

"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 two 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 jurisdiction and powers to be exercised by the orphans' court of such county."

Mr. LILLY. That is the report of the committee.

Mr. ARMSTRONG. Except as to the amount of population. It is fixed at two hundred thousand, which would practically prevent its being established anywhere else than Philadelphia and Allegheny counties. Then it leaves it to the discretion of the Legislature.

Mr. TURRELL. I will make it one hundred thousand.

The CHAIRMAN. The amendment will be so modified.

Mr. MANN. I do not understand precisely how this would leave it. If the Clerk read it as it is proposed to be amended, then clearly it ought not to be adopted, for it leaves this question of the auditing of accounts just as it is now, and that is the only thing that this section is good for. We had better vote the whole thing down if the question of auditing is left untouched.

Mr. LILLY. We can put it in a new section.

Mr. TURRELL. It strikes me that the question of auditing belongs to the Legislature. When they come to pass a law providing for the judges contemplated in the section, they can correct that matter if it needs further correction.

Mr. MANN. It does seem to me that if there is anything that needs correction, it is just that; and we might as well leave it all to the Legislature. Unless we are to correct it, there is no use in doing anything. Sir, the history of the last thirty years shows that the Legislature does not correct it. This evil has been growing, increasing; and the Legislature have not corrected it. I understand that it is the duty of the Convention to correct such evils as experience has proved that the Legislature will not correct. The Legislature has always shown a disposition to increase the judicial force; there is no difficulty about that; they will give all the judicial force that is needed if the people demand it; but there are certain evils, similar to this one that has grown up in relation to the auditing of accounts, that they will not correct; and if this Convention does not do it it will fail of its duty entirely; it will leave an abuse that is growing, and year by year will continue to grow, unless this Convention puts its hand upon it. All there is in this section that is worth talking about is this attempt to correct the abuse in the auditing of accounts.

The CHAIRMAN. The question is on the amendment of the delegate from Susquehanna (Mr. Turrell.)

The amendment was rejected, there being on a division ayes twenty-eight; less than a majority of a quorum.

The CHAIRMAN. The question is on the amendment of the gentleman from Lycoming (Mr. Armstrong) as amended, as a substitute for the original section.

The amendment was agreed to.

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



Mr. DARLINGTON. Now I move to amend the section. I move to strike out the last line, "and in such case the auditor's fee shall be paid by the parties." The reason I do this, is to leave it in the power of the court to punish an unnecessary litigant by putting the costs upon him, and not make innocent parties pay.

The CHAIRMAN. The question is on the amendment of the gentleman from Chester.

Mr. ARMSTRONG. I see no particular objection to that. These words were inserted by Judge Woodward. I do not see that they are important, and striking them out leaves the question of costs to be settled by the court as now.

The amendment was agreed to.

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

The section as amended was agreed to; there being on a division, ayes thirty-nine, noes thirty-five.

Mr. WRIGHT. 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. Lawrence) 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 to-morrow.

LEAVE OF ABSENCE.

Mr. ARMSTRONG. Mr. President: With exceeding great reluctance I am compelled to ask leave of absence, for reasons which I stated when the House was in committee of the whole. I have received a dispatch which leaves me no alternative. I therefore ask leave of absence for a few days.

Leave was granted.

Mr. DARLINGTON. I move an adjournment.

The motion was agreed to, and (at five o'clock and fifty-five minutes P. M.) the Convention adjourned.

## NINETY-NINTH DAY.

WEDNESDAY, May 14, 1873.

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

Prayer by Rev. J. W. Curry.

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

### USE OF THE HALL.

Mr. NILES. Mr. President: I offer the following resolution:

*Resolved*, That the use of this Hall be granted to the Women's Centennial Association of America for Friday evening of this week, in aid of the Centennial Celebration of 1876.

The resolution was twice read and adopted.

Mr. MANN. I offer the following resolution:

*Resolved*, That on and after Monday next the morning sessions of this Convention shall commence at nine o'clock.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted, forty-two in the affirmative, twenty-six in the negative.

The resolution was read the second time.

Mr. LILLY. I move to amend by striking out "nine," and inserting "nine and a half o'clock."

Mr. BARTHOLOMEW. I move to amend the amendment so as to provide that there shall be but one session a day, commencing at nine and a-half o'clock, the hour indicated in the amendment, and ending at three. We shall do more work a good deal in that way.

The PRESIDENT. It is moved and seconded to amend the resolution by making the hour of meeting half-past nine o'clock, and it is moved to amend that amendment by adding that there shall be but one session a day, to close at three o'clock. The question is on the amendment to the amendment.

Mr. BIGLER. I desire only to say, that from what experience I have had in bodies of this kind, I am clear that the amendment proposed by the gentleman from Schuylkill will facilitate the business of the House; that by having one session

from half-past nine to three o'clock, we shall do more business than we do now in two sessions. That is all I desire to say.

The amendment to the amendment was agreed to, there being, on a division: Ayes, thirty-eight; noes, twenty-eight.

The PRESIDENT. The question recurs on the amendment as amended.

The amendment as amended was agreed to, there being, on a division: Ayes, thirty-seven; noes, twenty-seven.

The PRESIDENT. The question now is on the resolution as amended.

Mr. ALRICKS. Let it be read for information.

The CLERK read as follows:

*Resolved*, That on and after Monday next, the sessions of this Convention shall commence at nine and a half o'clock A. M., and that there shall be but one session, to close at three o'clock P. M.

On the question of the adoption of the resolution as amended, the yeas and nays were required by Mr. Harry White and Mr. De France, and were as follow, viz:

### Y E A S.

Messrs. Alricks, Baer, Baker, Barclay, Bartholomew, Bigler, Boyd, Broomall, Buckalew, Carey, Clark, Corbett, Corson, Curtin, Darlington, Dunning, Edwards, Ellis, Funck, Gibson, Gilpin, Guthrie, Hanna, Hay, Heverin, Landis, Lilly, MacConnell, M'Clean, Mann, Metzger, Mitchell, Palmer, G. W., Patterson, D. W., Pughe, Purviance, John N., Reed, Andrew, Ross, Smith, Henry W., Van Reed, Wetherill, J. M., Wetherill, John Price, White, Harry and Meredith, *President*—44.

### N A Y S.

Messrs. Achenbach, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Bowman, Carter, Cochran, Collins, Curry, Davis, De France, Elliott, Fulton, Hall, Harvey, Horton, Hunsicker, Lawrence, M'Culloch, Minor, Newlin, Niles, Patton, Porter, Purviance, Samuel A., Russell, Temple,

Turrell, Wherry, White, David N., White, J. W. F., Worrell and Wright—33.

So the resolution as amended was adopted.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Armstrong, Bannan, Bardaley, Biddle, Black, Charles A., Black, J. S., Brodhead, Brown, Campbell, Cassidy, Church, Craig, Cronmiller, Cuyler, Dallas, Dodd, Ewing, Fell, Finney, Gowen, Green, Hazzard, Hemphill, Howard, Kaine, Knight, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, M'Murray, Mantor, Mott, Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Read, John R., Reynolds, Rooke, Runk, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Stewart, Struthers, Walker and Woodward—55.

SATURDAY SESSIONS.

Mr. BOWMAN. I offer the following resolution:

*Resolved*, That hereafter, and until otherwise ordered, the Convention will hold one session each Saturday, commencing at ten o'clock A. M., and ending at two o'clock P. M.

The resolution was twice read.

On the question of agreeing to the resolution, the yeas and nays were required by Mr. Corbett and Mr. Hanna, and were as follow, viz:

YEAS.

Messrs. Achenbach, Bailly, (Perry,) Bailey, (Huntingdon,) Beebe, Bowman, Boyd, Carey, Carter, Collins, Corbett, Craig, Darlington, De France, Edwards, Elliott, Fulton, Guthrie, Hall, Hay, Horton, Lawrence, MacConnell, M'Culloch, Mann, Metzger, Mitchell, Niles, Patton, Porter, Pughe, Purviance, John N., Purviance, Sam'l A., Reynolds, Russell, Turrell, Wetherill, Jno. Price, Wherry, White, David N. and Wright—39.

NAYS.

Messrs. Alricks, Baer, Baker, Barclay, Bartholomew, Bigler, Black, Charles A., Broomall, Buckalew, Clark, Cochran, Corson, Curry, Curtin, Dallas, Davis, Dunning, Ellis, Funck, Gibson, Gilpin, Hanna, Harvey, Heverin, Hunsicker, Landis, Lilly, M'Clellan, Minor, Newlin, Palmer, G. W., Patterson, D. W., Reed, Andrew, Ross, Smith, Henry W., Temple, Van Reed, Wetherill, J. M., White, Harry, White, J. W. F., Worrell and Meredith, President—42.

So the resolution was rejected.

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ABSENT.—Messrs. Addicks, Ainey, Andrews, Armstrong, Bannan, Bardsley, Biddle, Black, J. S., Brodhead, Brown, Campbell, Cassidy, Church, Cronmiller, Cuyler, Dodd, Ewing, Fell, Finney, Gowen, Green, Hazzard, Hemphill, Howard, Kaine, Knight, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, M'Murray, Mantor, Mott, Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Read, John R., Rooke, Runk, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Stewart, Struthers, Walker and Woodward—51.

FILLING OF MR. M'ALLISTER'S SEAT.

Mr. LAWRENCE. The delegates at large on whom devolved the duty of supplying the vacancy occasioned by the death of the late Hugh N. M'Allister, beg leave to make the following report:

The undersigned, members at large of the Convention who were voted for by a majority of the same voters who voted for and elected the late Hugh N. M'Allister, Esq., do hereby fill the vacancy occasioned by his death, by the appointment of Samuel Calvin, Esq., a citizen of Blair county, to be a member of this Convention.

WM. M. MEREDITH.  
WM. LILLY,  
LIN BARTHOLOMEW,  
WM. DAVIS,  
JAS. L. REYNOLDS,  
GEO. V. LAWRENCE,  
WM. H. ARMSTRONG,  
D. N. WHITE,  
WM. H. AINEY,  
JNO. H. WALKER.

PHILADELPHIA, May 13, 1873.

The PRESIDENT. The report will be laid on the table.

ACCOUNTS FOR PRINTING.

Mr. HAY. I desire to call up for action the report of the Committee on Accounts and Expenditures of the Convention presented on last Friday, which has been printed and laid on the desks of members. I move that the House proceed to the further consideration of the report.

The motion was agreed to, and the first resolution reported by the Committee on accounts was read the second time as follows:

*Resolved*, That no warrants be drawn for payments to the Printer of the Convention.

Mr. HAY. Mr. President: I hope we shall have final action on this subject, now. The Committee on Accounts and

Expenditures have no desire whatever to press any particular course of action upon the Convention. The members of that committee are interested only as all other members of the Convention are interested to secure a right settlement. This matter came properly before them when considering the propriety of reporting a resolution directing that further warrants be drawn in favor of the Printer for this Convention. The committee deemed it their duty to examine the acts of Assembly which are cited in the report, and they have reported the construction which in their opinion those laws bear. If the Convention should differ in opinion with the committee as to the right construction of these laws, the committee will of course conform their action to the directions of the Convention on the subject. I do not intend to make any argument now to sustain the report, but it is very necessary that the committee should have instructions from the Convention by which they may be able to guide their action intelligently in the future.

There is one matter, however, which it is proper now to bring to the notice of the Convention which may affect their judgment upon the question before us; and that is, the *practical impossibility* of the final settlement of the accounts for the printing and binding of this Convention by the Convention or by any of its committees. The printing cannot be finished, and the binding certainly will not be done; very few of the printed and bound volumes of the Debates and Journals will be delivered by the time this Convention adjourns *sine die*; and as a matter of course no final settlement of the accounts for the same can be made by any committee of this body, nor a final payment made to the Printer of the Convention. Why then should the Convention take into its hands the settlement of these accounts at all? It cannot effect a final settlement. It can only make partial payments on account, and final settlement will, of necessity, have to be made by the officers who have the adjustment and settlement of the other accounts of the Commonwealth. There will be nobody in existence after this Convention adjourns that will be competent to make a settlement except the Legislature or the Auditor General of the State. I ask the members to take that fact into consideration in determining this question, because the utmost that can possibly be done by this

body is to make partial payments; and the eventual and final settlement must be left to some other authority.

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

Mr. HAY. Certainly.

Mr. BOYD. Do I understand the committee to report that as the law now stands the Auditor General of the Commonwealth should settle with the Printer.

Mr. HAY. The committee report that in their opinion, as the laws now stand, by which the Convention has heretofore guided its action in the settlements of its accounts, the Auditor General is the official now authorized by law to make a settlement of the accounts for the printing and binding of this Convention. I regret that laws have been passed to effect this result, but in my opinion such laws do exist. My own opinion has been strengthened, not only by that of some of the most distinguished lawyers in this body, but also by the concurrence of my colleagues on the Committee on Accounts, two of whom are the only members of this body who have filled the position of Auditor General of the Commonwealth, and who are familiar with the laws regulating that officer, and are men of eminent legal attainments and ability.

Mr. BUCKALEW. I am very clear in opinion that the act of 1872 was not changed by the supplement of 1873 as to the drawing of warrants by our presiding officer, countersigned by the clerk, for all expenses of the Convention. I have looked over and compared these statutes carefully, and that is my judgment. The act of 1872 covered everything, the language being, "warrants for compensation of members and officers, and for all proper expenses of the Convention, shall be drawn by the President and countersigned by the Chief Clerk, upon the State Treasurer for payment."

I do not understand that that provision of the act of 1872 was repealed by the act of 1873; and that conclusion seems to me to be irresistible when we consider that the main object of the act of 1873 was to repeal the act of 1872 as to the salaries of the members of the Convention. The salaries were fixed by the former statute at \$1,000 for each member. It was the intention by the later act to repeal that, and hence this repealing clause which we find in the later statute; but as to the manner in which payments should be made, it seems to me the act of 1872 is left entirely untouched. The act of 1873 reads:

"For the pay of the expenses of the Constitutional Convention, including the pay of the members, clerks and officers thereof, and the printing therefor, the sum of \$500,000, or so much thereof as may be necessary, to be settled by the Auditor General."

The Auditor General is not to settle the printing account merely; he is to settle all the accounts; he is to settle the accounts for the salary of members, he is to settle the accounts for the pay of our officers, and all our incidental outlays, just as much and just as far as he is to settle the printing account. It is a general provision, applying to all our outlays of every description. But here follows the clause which seems to have misled the committee, which I will read: "And the amounts of the salaries of the members and clerks, and the pay of the officers and employees thereof, shall be fixed by the said Constitutional Convention, and the money shall be paid by the State Treasurer," &c., repeating the provision of the former statute; that is, when they provide that the pay shall be fixed by the Convention itself, they simply repeat the provision of the former law, that warrants shall be drawn by the presiding officer and Chief Clerk for the amount of pay so fixed; but of course that has no relation to the general provision of the former statute with regard to other outlays of the Convention. That remains untouched.

By this construction both laws are left in full force as to all their provisions except in two particulars. The act of 1873 provides that the Convention itself shall fix the compensation of its members, and also that the Auditor General shall settle, not the printing account, but all the outlays and expenditures of this Convention. It seems to me, therefore, that not one dollar can be paid by the State Treasurer under either of these statutes, except upon the warrant of the presiding officer of this body.

Mr. HAY. I wish to ask the gentleman from Columbia whether the accounts of this Convention must be settled by the Auditor General before a warrant can be drawn?

Mr. BUCKALEW. The manner of executing the power is a distinct question. I am speaking now upon the question of power. I think that not one dollar can be lawfully paid by the State Treasurer except upon a warrant properly countersigned for any outlay of this Convention; and it follows that to authorize a warrant

to be drawn there must be an ascertainment of the amount due, so that virtually a supervision of every outlay of the Convention is charged upon it and must be had.

Now, sir, my idea is that either of two modes may be adopted. Our Committee on Accounts and Expenditures may ascertain what is due an officer or an employee—and the Printer is merely an employee—or what is due to the members themselves, and upon that ascertainment the Auditor General can enter upon his books, as in other cases, the proper amounts due, and upon a certificate that a settlement has been made the President will draw his warrant accordingly.

Mr. HAY. I desire to ask the gentleman from Columbia this question, how it will be possible for a committee of this body, after the adjournment of this body, when a final settlement is to be made, to affect any settlement with anybody? Will not all the authority of this body and its committees be gone and the authority of the President to draw warrants be gone on its final adjournment?

Mr. BUCKALEW. That difficulty which the gentleman regards as a great one, I think is a very small one. All the casual printing of the Convention, I mean our files, reports, and other matters of the same sort, will be complete before we adjourn; the account can be settled before we adjourn. There is nothing I know of that will remain after that except a little printing of the last volume of the Debates and the Journal, and the Convention can make provision for the settlement of that by the Committee on Accounts after the adjournment and authorize the President, upon the report of the committee made to him, to draw a warrant. What the Convention does through a committee or its presiding officer upon due resolution is done by itself. It does not wholly cease to exist if it chooses to continue for certain purposes its powers and the authority of its officers. You can pass an ordinance authorizing a committee of this Convention or the President to perform any necessary duty for six months after we adjourn.

I only desire to add that in my view of the law we must ourselves authorize the drawing of the warrants for every dollar of expenditure, and I shall vote against the resolution.

Mr. J. N. PURVIANCE. Mr. President: Under the act of 1811 full power is conferred on the Auditor General to settle

all the public accounts, and under it he exercises that power in all cases except where the Legislature takes it from him, and in many instances, by act of Assembly passed, the accounting department has no jurisdiction whatever over the settlement of certain specified public accounts.

The act of 1872, in reference to the expenses of this Convention, declares that warrants for the compensation of members and officers, and for all proper expenses of the Convention, shall be drawn by the President and countersigned by the Chief Clerk, on the State Treasury for payment. Now, I take it that when the warrant is drawn by the President and countersigned by the Chief Clerk, the Treasurer is bound on that warrant to pay the money, and that it is a proper and legal voucher to him in the settlement of his accounts, and that the Auditor General has no power or control over it. It is a settled and fixed matter by the Convention. That act, however, was repealed by the act of 1873 in part. The act of 1873 provides:

"For the pay of the expenses of the Constitutional Convention, including the pay of the members, clerks and officers thereof, and the printing therefor, the sum of \$500,000, or so much thereof as may be necessary, to be settled by the Auditor General; and the amount of the salaries of the members and clerks, and the pay of the officers and employees thereof, shall be fixed by the said Constitutional Convention."

Now, I take it that when the Convention fixes the salary of members and the pay of the clerks and employees of the Convention, there its power ceases, and when the President has signed the warrants and they are countersigned by the Chief Clerk for the account so settled, that is conclusive; there is no supervisory power over it by the Auditor General. But then this section provides further: "and the printing therefor the sum of \$500,000, or so much thereof as may be necessary, to be settled by the Auditor General." What is it that the Auditor General has to settle? It is the printing or else it is nothing at all. It is evident that there is no other act that the Auditor General has to do, except settle for the printing, because so far as all other expenses of this Convention are concerned they are to be fixed and settled by the Convention itself, and payment thereof is to be made by the State Treasurer upon the warrant of the President of the Con-

vention, countersigned by the Chief Clerk. Those warrants when issued and paid by the State Treasurer are conclusive; there is no power on earth to super-vise them, or to gainsay them, or to modify or correct them. That is settled.

Then, as the section provides that the Auditor General shall settle something, what is it that he is to settle? Nothing is left upon except the printing. The paper may be settled for by this Convention, and the expense of the Debates, because that is not included; but the expenses of the printing are clearly left as an item to be settled by the Auditor General, and no other item whatever of our expenses is to be so settled.

These are my views in brief, and the opinion of the committee unanimously, after consideration and mature deliberation upon the whole subject.

MR. HARRY WHITE. Mr. President: I merely desire to add a word in confirmation of what was said so properly by the delegate from Columbia (Mr. Buckalew.) I may remark that I entirely concur with his general view, if I understood him correctly, that it was not the intention of the Legislature at all to take the settlement of our accounts out of the hands of our proper committee; and I confess, with all due deference to others who have had experience in the administration of the government, that I am puzzled to know how a difference of opinion can arise upon this subject. No difference of opinion can exist under the seventh section of our organic act. Under that act we had full and ample power in the premises to settle all our accounts and the manner of the payment was provided for. Upon that there is no question. The doubt arises upon the proper construction of a clause in the appropriation bill of the present year. Let me call the attention of the delegates to that clause. It says:

"For the payment of the expenses of the Constitutional Convention, including the pay of the members, clerks and officers thereof, and the printing therefor, the sum of five hundred thousand dollars, or so much thereof as may be necessary, to be paid by the Auditor General."

This is the ordinary phrase to be found in all appropriation bills. What does it mean in connection with the other clause, the latter sentence of this paragraph in the act of 1873?

The latter sentence provides: "And the amount of the salaries of the members and clerks, and the pay of the officers and em-

ployees thereof, shall be fixed by the said Constitutional Convention, and the money shall be paid by the State Treasurer, on a warrant of the President of the said Convention, countersigned by the Chief Clerk of the Convention; and any statute inconsistent herewith be and the same is hereby repealed."

That is perfectly clear. It means that under this clause the salaries of the members and the salaries of the officers are paid directly by the State Treasurer, without any recourse to the Auditor General whatever, upon the warrants drawn by the presiding officer. This is just like the manner in which members of the Legislature are paid. Members of the Legislature are paid by a warrant drawn by the speakers of the respective houses, and the State Treasurer, without any recourse to the Auditor General whatever, pays directly upon that warrant. That is all right. How is it with respect to the officers and employees and the ordinary expenses, the disbursement of the contingent fund, which is allowed to the clerks of the respective bodies? That is not settled in that way; that is settled by the Auditor General. How? The Chief Clerk himself, or the assistant clerks, or the sergeant-at-arms, receive a statement or certificate of their accounts, made out by the Chief Clerk. That is countersigned by the presiding officers of the respective bodies and they take that to the Auditor General and the Auditor General passes upon that, issues his warrant upon the State Treasurer, and the State Treasurer pays that warrant.

That is just what is designed to be done here. It is said that we cannot settle our accounts. Why not? It is said that it will raise conflict. How? Under the provisions of our organic act, under the regulations which we have made, we have a Committee on Accounts and Expenditures. We have a State Printer who is acting under a contract with us. We have our official Reporter who is acting under a specific contract. Our Committee on Accounts and Expenditures passes upon their bills and upon their claims, and make report to this Convention, which passes a resolution accordingly. That is in the nature of a certificate; that is a statement of their accounts and that is presented to the Auditor General and the Auditor General issues his warrant thereupon.

That is my understanding of this clause of the appropriation bill of 1873, and under

this view there can be no conflict whatever. I am unwilling, for one, to allow the settlement of the accounts or expenditures of this body to go out of our own hands. This is a reform Convention, it has been clothed with large power by the Legislature which represents the people. The people expect this Convention to carefully discharge the responsibilities with which we are entrusted, and I am unwilling to allow any large account, or the expenditure of any large amount to go out of our hands, to be relieved of our supervision when in the end we shall be still visited possibly, with unkind reflections and criticism.

Mr. NILES. May I ask the gentleman from Indiana a question?

Mr. HARRY WHITE. Certainly.

Mr. NILES. If the idea of the gentleman be correct, and the version of the act of 1873 given by the Committee on Accounts and Expenditures be not correct, then what was the intention of the Legislature in creating the act of 1873?

Mr. HARRY WHITE. I will answer the gentleman with pleasure. The intention of the Legislature in placing in the act of 1873 this clause providing for the expenses of this Convention was the same they always have in making appropriations for the expenses of the different departments of the government. The ordinary appropriation is made for the Auditor General's office, for the Surveyor General's office, for the State Treasurer's office, for the Executive department, for the Secretary of the Commonwealth. All the expenses there are certified to by the heads of the different departments; those certificates go to the Auditor General and the Auditor General issues his warrant thereupon just as it is proposed to do here. The Legislature in framing this provision wanted to be consistent with itself. I see no difficulty in settling our accounts in the ordinary manner.

The gentleman from Allegheny, (Mr. Hay,) chairman of the Committee on Accounts and Expenditures, says that there must be some printing done after we adjourn. That can be provided for. We can anticipate that by a resolution directing the manner in which that can be settled after the Convention has adjourned.

Mr. MANN. I would like to ask the gentleman from Indiana a question, with his permission.

Mr. HARRY WHITE. Certainly.

Mr. MANN. The question I desire to ask is, if the President of this Convention

is authorized to draw warrants, what is there left to the Auditor General to settle?

Mr. HARRY WHITE. That is perfectly clear.

Mr. MANN. I ask also if the warrant of the Speaker of the House of Representatives is not always taken as the authority upon which the State Treasurer pays out the money?

Mr. HARRY WHITE. My friend from Potter does not understand me. Of course the warrants of the Speakers of the respective Houses, in favor of the different members, is taken by the State Treasurer and is paid without any recourse to the Auditor General. That warrant is the voucher of the State Treasurer and it is all right. But that is not what I now speak of. No officer, no employee of the Legislature, no expenditure of the Legislature is paid for by the State Treasurer upon the warrant of either of the presiding officers. Those items are all paid under a certificate issued by the Chief Clerk and countersigned by the presiding officers of the two Houses. When so certified they are laid before the Auditor General, and he issues his warrant thereupon and that warrant is paid at the Treasury. That is the uniform practice of the government.

Mr. MANN. The gentleman does not answer my question. I ask if the President of this Convention is to draw his warrants for all the money to be paid out, what is left, under this section of the act of 1873, for the Auditor General to do?

Mr. HARRY WHITE. An abundance. If the delegate from Potter will read the clause, he will observe in the latter sentence of the section that the President of this Convention is to draw his warrants.

Mr. MANN. For what?

Mr. HARRY WHITE. For the payment of the salaries of the members and of the officers; but he does not draw his warrant directly for the payment of the ordinary expenses of this Convention. He does not do so for the payment of the printing. That is settled by the body itself and certified accordingly, and laid before the Auditor General, who issues his warrant thereupon. That is the practice, and my friend from Potter knows that is the practice. He knows that no officer of the Legislature is paid upon the warrant of the presiding officer of either House. The printing expenses of the Legislature itself are never paid upon the warrants of the presiding officer. The only payment that

is made by the State Treasurer directly upon the warrant of the presiding officer is the pay of the members themselves.

Mr. MANN. In reply to that, I have to say that if this Convention does authorize the President of this body to draw his warrant for the pay of the members of the Convention, and for every dollar of expense except that for printing, there is nothing left for the Auditor General to attend to except this matter of printing, which is the only thing to which this clause of the act of 1873 can apply. If the President of this Convention is to draw his warrant for every dollar of the expenses of this Convention except that, this matter of printing is all that can go to the Legislature.

Mr. BAER. Mr. Chairman: I think the resolution offered by the chairman of the Committee on Accounts and Expenditures is exactly proper as far as it goes; but enough has been developed in this discussion to show that that resolution does not go far enough; that unless we propose to take up a similar amount of time in discussing this question of drawing warrants in the future, we had better amend that resolution now, and include another matter. It is clear from the act of 1873 that the State Treasurer has no right to pay any money to the Printer or to the members and officers of this Convention, except by warrants drawn by the President. Now I hold that the president of this Convention ought not to be asked to draw a warrant in favor of any officer or employee or any member without this Convention first taking the responsibility of establishing the amounts that they are entitled to.

The purpose of the act of 1873 was that this Convention should fix the amount to be paid to the members, as well as to the officers and employees; and in a Reform Convention like this, where we are complaining about the payment of moneys by officials without warrant of law, we are asking and expecting that the State Treasurer shall, from time to time, make payments to members and to officers without any authority of law whatever. For one, as a member of this Convention, I say that if I were State Treasurer I would not pay out one cent of the expenses incurred by any Reform Convention until that convention assumed the responsibility of saying what amount should be paid. For that purpose I offer the following amendment, to come in at the end of the resolution:



"Nor to members of this Convention until the amounts of salary of members and the compensation of clerks and employees shall have been fixed by the Convention."

Mr. DARLINGTON. Mr. President: "Who shall decide when doctors disagree?" My suggestion to the gentlemen all around is that in the state of uncertainty in which this law seems to place us—for it is evident we do not all take the same view of it—the safest course for us will be to hold control over the printing and settle our own accounts. I suggest that it will be impolitic to adopt a resolution ignoring and abjuring our authority altogether. It will be a great deal better for us, if there is any doubt in the minds of members, to settle it as far as we can and I do not see why we cannot settle entirely the whole of these accounts. I am opposed to the resolution.

Mr. TEMPLE. My judgment about this matter is very clear. According to my reading of this act of Assembly, all the Legislature meant to do was this: After the President signs the warrants and after the warrants have been paid by the State Treasurer, then the Auditor General is to settle the accounts as between the Constitutional Convention as a body and the State Treasurer. That is the plain reading of law. After the warrants have gone in and after they have been paid, then this law reads that so much of that five hundred thousand dollars as shall be necessary shall be appropriated to the expenses of the Constitutional Convention, and it is then left for the Auditor General to settle the accounts between the Convention, not between the members or employees, but as between the Convention itself and the State Treasurer.

Mr. J. N. PURVIANCE. Mr. President: I wish simply to remark, in reply to what has been said by the delegate from Indiana, (Mr. Harry White,) that if the Legislature had stopped at the word "Auditor General," in other words if the act had been "for payment of the expenses of the Constitutional Convention,"—that includes the members—"including the pay of the clerks and officers thereof, and the printing therefor, the sum of \$500,000, or so much thereof as may be necessary, to be settled by the Auditor General," then we should have had no difficulty whatever in understanding it. It would have thrown the settlement of the expenses of the Convention back on the general powers of the accounting offi-

cer, the Auditor General, under the act of 1811, which generally defines all his powers and duties in regard to the settlement of public accounts. But it goes on further: "And the amount of the salaries of the members and clerks, and the pay of the officers and employees thereof, shall be fixed by the Constitutional Convention." What is meant by the word fixed? Settled, concluded, "by the said Constitutional Convention." We have entire power over that portion of it—"and the money shall be paid by the State Treasurer on the warrant of the said Convention, countersigned by the Chief Clerk of the Convention."

Now, all moneys so paid, all accounts so settled, are conclusive, and no power is left over them. The State Treasurer has a voucher as to them, which is perfect in itself, without the exercise of any discretion or power on the part of the Auditor General; but so far as regards the printing, that is left out; it is an item not included in those enumerated where the President is to draw his warrant and consequently it comes under the general provision of the old act of 1811 to be settled by the Auditor General as all other public accounts are to be settled. Furthermore I would add that so far as regards the expense of public printing, the President of this Convention has no power to sign a warrant for it at all.

Mr. GUTHRIE. Mr. President: It appears to me that there is no difficulty about this question; it is a mere question of accounts. As I understand the law, the President of the Convention is authorized to draw his warrant on the State Treasurer for the expenses of the Convention, and the Treasurer is authorized to pay on the warrant of the President. But the President has nothing to do with settlement of those accounts. When the Treasurer's accounts are to be settled, they are settled with the Auditor General. The Auditor General audits the Treasurer's account, and if he has paid the warrants that are authorized by law, he will get a credit in the Auditor General's office. If he has not paid out according to law, he will not obtain credit for it. It is merely, in my opinion, a simple question of accounts. The President is authorized to draw his warrants by the law on the State Treasurer; the Treasurer is authorized to pay; and then his accounts are to be settled by the Auditor General.

Mr. MACCONNELL. I do not know whether it is in order now; but if it is, I

will offer the following amendment: Strike out the word "no" in the resolution and add to the end of the resolution: "for so much as he may from time to time be entitled to receive," and the resolution will then read:

"That warrants be drawn for the payment of the Printer of the Convention for so much as he may from time to time be entitled to receive."

The PRESIDENT. The question now is on the amendment offered by the gentleman from Somerset (Mr. Baer.) This is not an amendment to that amendment.

Mr. ANDREW REED. So far as I observe the different acts, the act of 1872 and the act of 1873, I do not perceive that there is any difficulty in the construction of them. I think the words "settled by the Auditor General" do not refer to printing at all. The act of 1873 reads as follows:

"For the pay of the expenses of the Constitutional Convention, including the pay of the members, clerks and officers thereof, and the printing therefor, the sum of \$500,000, or so much thereof as may be necessary, to be settled by the Auditor General."

My construction of that act is, that what is to be settled by the Auditor General is the amount of that \$500,000. It may take all, or it may take but a part. After this Convention shall have settled what shall be the pay of the printer, and what shall be the pay of its members and officers, the Auditor General will settle what part of the \$500,000 is necessary. If that be true, there is no difference between the two acts, and both will harmonize. That is the view in which I look at it, and I think this Convention is bound to settle the amount.

The PRESIDENT. The question is on the amendment offered by the gentleman from Somerset (Mr. Baer.)

Mr. HAY. I desire to ask my friend to withdraw his amendment, because I think it is not pertinent to the subject, and in order that the amendment which the gentleman from Allegheny to my right (Mr. MacConnell) gave notice of may then be offered and the alternative fairly presented and the Convention may vote in favor of one course or the other as they deem right and proper. I hope the gentleman from Somerset will withdraw his amendment and permit a direct vote to be taken unembarrassed by the question which he raises.

Mr. BAER. I will accommodate the gentleman by withdrawing the amend-

ment and afterwards offer it as a separate resolution.

The PRESIDENT. The amendment is withdrawn.

Mr. MACCONNELL. I now offer the amendment that I gave notice of, to strike out the word "no" in the resolution, and add to the end of the resolution "for so much as he may from time to time be entitled to receive;" so that it will read:

"That warrants be drawn for payments to the Printer of the Convention for so much as he may from time to time be entitled to receive."

Mr. MINOR. I think if we look at this section of the act of 1873 *carefully*, we will find the true rule of construction, that we cannot agree to the resolution, but can to the amendment, and I think it will appear clear by looking at one single proposition. The first part of this section provides for the expenses of members, clerks, officers and Printer in terms, and it purports to refer them all to the Auditor General. That would embrace everything. Then in the second part of the section it says that the compensation of members, clerks, officers and employees shall be fixed by the Convention and warrants shall be drawn and countersigned in the manner provided.

It will be observed that the language in both parts of the section is precisely the same with the exception of two terms. Members, officers, clerks, printing and expenses are the terms in the first part; in the second the terms are members, clerks, officers and employees. If the first part of the section alone were to stand, everything would be settled by the Auditor General. If the last part alone were to stand, everything would be settled through the President of the Convention, according to the language, because the word "employee" is just as extensive when added to the specification of members and officers as anything possibly can be. Then it will be seen that members, officers and clerks are all provided for under the Auditor General and also under the President.

It strikes me very clearly that the Legislature undertook to express the same thing in both parts of the section, but in different language. I call the attention of the members to that proposition. The words members, officers and clerks are put under the Auditor General. The only difference is that in the first part it says "printing and expenses," and in the last

part it says "employees." It occurs to me, therefore, that the Legislature designed to cover precisely the same ground in both parts, and that we cannot take any part of one and place it exclusively under the other. Does any man claim that the Printer is anything more or less than an employee. If he is not an employee, he is not embraced; if he is an employee, he must be paid on the warrant of the President of this Convention. It strikes me, therefore, that we should construe these parts of the section together and place every person enumerated in both in precisely the same condition, to go through precisely the same forms in obtaining his compensation.

One consideration further to sustain that position. If the Legislature designed to make an exception of the Printer, they would have expressed it in such clear form as not to have admitted of doubt, which they have failed to do. When, therefore, the Legislature has not made a clear exception, but uses in one part of the section the terms "printing and expenses," and in the other the equivalent term of "employees," both mean the same thing, and we are not at liberty to separate them, but must settle them all in the same manner, through the President of this body, the Auditor General to perform his usual duties as to all as appears from the first part of the section. This places every thing under one rule, and harmonizes and gives effect to every part of the section.

Mr. GIBSON. Mr. President: I think if we look at this act of Assembly, there can be no mistaking its meaning and intention. The first clause of the section is the simple ordinary appropriation clause of a certain amount of money for the expenses of this Convention. The first branch of the second clause originated from a desire on the part of the Legislature to evade a matter that they should have taken upon themselves to determine; that is, the fixing of the pay of the members and employees of this Convention. They evaded that question, and attempted to throw, and did throw that responsibility upon the members of this Convention. Hence originated that part of the clause which said the Convention should fix the salaries of the members and employees of the Convention.

Then follows the last portion of the section, which says that the money shall be paid by the State Treasurer. What money? It is assumed by the Committee

on Accounts that that means the salaries fixed by the members. Not at all. The money referred to is the money appropriated, and what the Legislature meant was that this sum of \$500,000 herein appropriated or so much as may be necessary should be paid on the warrant of the President, countersigned by the Chief Clerk of the Convention.

That view of the case explains the whole act of Assembly as it appears now before us. The first clause of the article merely means that so much money shall be appropriated, and "to be settled by the Auditor General" is an ordinary phrase in every act of appropriation. Then the Legislature threw upon this Convention the responsibility of fixing the salary. That is a separate matter. Then the provision with regard to the payment of money refers to the payment of the \$500,000 or so much thereof as may be necessary.

Mr. CORSON. I rise to move the previous question. There is no use in discussing this matter all day. We all understand the law.

The PRESIDENT. The call for the previous question does not appear to be seconded.

Mr. NEWLIN. It occurs to me, after listening to this debate, that there is only one proposition which may be said to be a clear one, and that is that the act of 1873 is very bunglingly drawn, and that whatever meaning was intended to be expressed in it, the words were not chosen to distinctly indicate it. I confess I am quite indifferent what action is taken upon this matter in one aspect; that is to say, if the Convention thinks it wiser for the Auditor General to settle these accounts, well and good. The point I take is this: That whatever is done should be done by a vote of this Convention of its own power and of its own authority, without reference to the act of Assembly; because I consider that it is wholly unimportant what the act says on this subject. This Convention can derive no powers from the Legislature; neither can it be restricted by the Legislature; and whatever is done, I trust will be done by a vote of the House of its own motion and without regard to the particular provisions of these acts of Assembly.

Mr. CORSON. I move the previous question.

The PRESIDENT. Is the call seconded? Eighteen members rose to second the call.

The PRESIDENT. Gentlemen will announce their names so that the Clerk may record them.

Mr. HAY. I ask permission to make one remark. I desire to say to those gentlemen who desire at this time to call the previous question and have the vote taken, that all the members of the committee who wish to be heard on this question have not been heard, and I hope one of my colleagues will be permitted to address the Convention on this subject.

Mr. HARRY WHITE. The previous question is called, and I submit it is not proper for gentlemen to go around electioneering for members to put their names down.

The PRESIDENT. The names of those seconding the call for the previous question will be read.

The CLERK read the names as follows:

Messrs. Corson, Andrew Reed, Hunsicker, Edwards, Broomall, Lilly, Guthrie, Newlin, Russell, Bowman, Metzger, Carey, McClean, Ellis, Wherry, Worrell, Carter, Hanna and Hazzard.

On the question, shall the main question be now put? the yeas and nays were required by Mr. Boyd and Mr. J. Price Wetherill, and were as follow, viz:

#### Y E A S .

Messrs. Achenbach, Barclay, Bigler, Bowman, Broomall, Carey, Collins, Corbett, Corson, Craig, Dunning, Edwards, Funck, Gilpin, Guthrie, Hall, Hanna, Hazzard, Hunsicker, Landis, Lawrence, Lilly, MacConnell, M'Murray, Metzger, Mitchell, Newlin, Niles, Palmer, G. W., Porter, Pughe, Purviance, Samuel A., Reed, Andrew, Reynolds, Russell, Smith, Henry W., Van Reed, Wherry, White, David N. and Worrell—40.

#### N A Y S .

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Bartholomew, Black, Charles A., Boyd, Buckalew, Cassidy, Clark, Curry, Dallas, Darlington, Davis, De France, Ellis, Fell, Finney, Gibson, Harvey, Hay, Horton, Knight, M'Clean, M'Culloch, Mann, Minor, Patterson, D. W., Patton, Purviance, John N., Read, John R., Ross, Stewart, Temple, Turrell, Wetherill, J. M., Wetherill, Jno. Price, White, Harry, White, J. W. F., Wright and Meredith, *President*—43.

So the Convention refused to order the main question to be put, and the resolution was laid over until to-morrow.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Armstrong, Bannan, Bardsley, Biddle, Black, J. S., Brodhead, Brown, Campbell, Carter, Church, Cochran, Cronmiller, Curtin, Cuyler, Dodd, Elliott, Ewing, Fulton, Gowen, Green, Hemphill, Heverin, Howard, Kaine, Lamberton, Lear, Littleton, Long, MacVeagh, M'Cammant, Mantor, Mott, Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Rooke, Runk, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Struthers, Walker and Woodward—49.

#### THE JUDICIAL SYSTEM.

Mr. DARLINGTON. I move that the House resolve itself into committee of the whole for the consideration of the article reported by the Committee on the Judiciary.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose yesterday it had reached the twenty-third section of this article, which will now be read.

The CLERK read as follows:

SECTION 23. The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania and conclude "against the peace and dignity of the same."

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section twenty-four, as follows:

SECTION 24. Any vacancy happening by death, resignation, or otherwise in any court of record, shall be filled by appointment by the Governor, to continue till the first Monday of December succeeding the next general election.

Mr. BUCKALEW. Mr. Chairman: That section certainly requires amendment. It does not provide for cases where vacancies shall happen very near the time of an election, so that there is not time to give notice and to include the notice in the sheriff's proclamation. This is a provision that the Governor shall fill the vacancy until the first Monday of December following, whereas in some cases the appointment must necessarily be longer.

Mr. BROOMALL. I think if the gentleman will look at it he will see that the case he mentions is entirely covered. If

a vacancy should happen close to the election so that there is no chance for an election, still after the election there will be a vacancy which can be filled by the Governor until an election comes again; so that the ground is entirely covered. Does the gentleman from Columbia take the idea?

Mr. BUCKALEW. The ground is not covered.

Mr. BROOMALL. I think it is.

Mr. BUCKALEW. If the Governor should fill the vacancy before the election, then the commission will expire on the first Monday of December following.

Mr. BROOMALL. Then there is a vacancy.

Mr. BUCKALEW. Then there is a double vacancy.

Mr. BROOMALL. And he fills it again.

Mr. BUCKALEW. Is that the idea?

Mr. BROOMALL. Yes, sir.

The CHAIRMAN. The question is on the section.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section twenty-five, as follows:

SECTION 25. The several district courts 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 court of common pleas of such district.

Mr. ELLIS. I move to amend by inserting after the word "courts" in the first line, the words "and the court entitled the court of the first district of criminal jurisdiction."

Mr. Chairman, I offer this amendment out of no spirit of hostility to the judge who presides over this court. I will not detain the Convention by entering into a detail of what this court is. It is a court most extraordinary in its construction and a court most extraordinary in its powers. All parties in our county are agreed that it is a court that ought to be abolished, and that such a court ought not again to be created in the State of Pennsylvania. On the question of its abolition, there

is no one opposed to it, not even the judge himself.

I desire to say that as soon as this is passed upon, after the word "office," in the seventh line, I wish to provide that this judge shall be commissioned in our county as a judge of the court of common pleas for the unexpired term of his office, so as to make his office a constitutional office instead of a legislative one as now. This will meet the desire of all parties in the district.

Mr. LANDIS. Mr. Chairman: I do not know whether it would be in order now or at a later period, but I desire to call the attention of the committee to the fact that this section would abolish the district court of Cambria county. There exists in Cambria county a court of limited jurisdiction; the jurisdiction is limited both as to the territory and the subject-matter, but I believe it is not desired by anybody that that court should be abolished. At all events, for the purpose of preserving that court until some one who may know something in regard to Cambria county can be heard from, I desire at the proper time to submit an amendment to except that court. I ask if it is in order now to insert "except the district court of Cambria county." It can come in after the amendment of the gentleman from Schuylkill.

The CHAIRMAN. The delegate from Blair will understand that there is an amendment already pending. The delegate from Blair can step up to the Clerk's desk and make his proposition as an amendment to the amendment, and it will be in order.

Mr. LANDIS. I move then to add "except the district court of Cambria county."

Mr. S. A. PURVIANCE. I will state that the Judiciary Committee in reporting this section had in view the fact that there were such courts in existence, as well in Cambria county as in several other counties; and the intention is, as the commission of these judges shall be surrendered, they are to be re-commissioned as common pleas judges for the rest of their term. It does not in any way interfere with the court in Cambria county but on the contrary it increases the commission of the judge now in office.

Mr. LANDIS. That is exactly what I wish to avoid. I do not think that the judge of the district court of Cambria county should be a judge of the common pleas.

Mr. S. A. PURVIANCE. If the gentleman's amendment is directed towards that, it is to be considered as striking out that part of the section.

Mr. LANDIS. It is not desired by any party and we do not want two common pleas judges in the Twenty-fourth district. It is for the very purpose of avoiding that difficulty that I now raise the question and submit the amendment.

Mr. BARTHOLOMEW. Mr. Chairman—

Mr. BUCKALEW. Before the gentleman proceeds I desire to make a suggestion. I desire to call the attention of the committee to the fact that we struck out the twelfth and thirteenth sections and dropped all the arrangement for turning over the district court judges to the court of common pleas. That was all left for the schedule, because we did not desire in the body of this article to have anything except permanent provisions. My idea is that as a matter of course this section should follow the fate of those. We cannot abolish the district courts in this section until we have made provision in the schedule in reference to the classification of the judges of the court of common pleas. There is nothing in the section but what is temporary in character and proper for the schedule, which will be made up of provisions conditional and temporary, not permanent. All the temporary provisions should go into the schedule.

I submit therefore that we shall save a great deal of time now, before we enter into debate on these propositions, if we agree by common consent to vote down this section, with the understanding that the matter shall be reserved for the schedule.

Mr. BROOMALL. I think that the gentleman from Columbia is right.

Mr. BARTHOLOMEW. I agree with that proposition most heartily. It seems to me that it is the shortest way to obviate this difficulty, to vote down this section, because there is such an entanglement in the courts in Schuylkill county that it would require a special provision incorporated in this Constitution for the purpose of preserving to the judge of the abolished court a jurisdiction. He was elected as a judge of a court established not for Schuylkill county alone, though Schuylkill county is a judicial district, but his court was organized for the three counties of Dauphin, Lebanon and Schuylkill. To carry out the unanimous wish of our people, with very few exceptions, the best mode would be to vote down this

section and then provide for these courts of special jurisdiction in the schedule.

The CHAIRMAN. The question is on the amendment offered by the delegate from Blair (Mr. Landis) to the amendment of the delegate from Schuylkill (Mr. Ellis.)

Mr. BROOMALL. I hope that will be withdrawn and let the section be voted down.

Mr. BARTHOLOMEW. Will my colleague allow me to suggest that he withdraw his amendment, and we vote down the section, and then make proper provision in the schedule.

Mr. ELLIS. I question very much whether the proper place for it is in the schedule, to provide for the transfer of the powers of these courts and these judges to other courts. The schedule is simply for the purpose of designating when the officers shall go out.

Mr. BARTHOLOMEW. For a merely temporary provision it seems to me that the schedule would be the proper place.

Mr. ELLIS. Very well, I withdraw my amendment.

Mr. LANDIS. If the object can be reached by voting down the entire section, I withdraw my amendment.

The CHAIRMAN. The amendments to the section are withdrawn, and the question is now upon the section.

The section was rejected.

The CHAIRMAN. The twenty-sixth section will be read.

The CLERK read as follows:

SECTION 26. The office of associate judge not learned in 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.

Mr. S. A. PURVIANCE. I now offer as a substitute for the section the following:

"Each county containing twenty-five thousand inhabitants shall constitute a separate judicial district and shall elect one judge learned in the law, and the Legislature shall provide for additional judges as the business of the said districts may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or if necessary, may be attached to contiguous districts as the Legislature may provide.

"The office of associate judge not learned in the law is abolished, excepting in counties not forming separate districts, but the

several associate judges in office when this Constitution shall be adopted shall serve for their unexpired time."

Mr. Chairman, the thirteenth section of this report of the Committee on the Judiciary contains a provision for the common pleas courts of the State. When that section was reached it was practically withdrawn by the chairman of the Committee on the Judiciary, with the intention of providing some other section that would meet the demands of the public. I am satisfied that the creation of a county court in counties having a population of twenty-five thousand or thirty thousand is demanded by the business necessities of each county. Provision is made here for counties of less than twenty-five thousand people; that they shall be grouped together so as to constitute a district; that if there are but one or two counties they shall be attached to a district; and until they attain the requisite population the associate judges shall be continued. That is necessary, because otherwise in the transaction of their legal business there is no one to whom application can be made for an injunction, for writs of *habeas corpus*, for receiving bail in certain cases. These are important proceedings which cannot be dispensed with, and therefore I have made provision to retain the associate judges in the counties having no law judge.

Allow me to say briefly, that I came into this Convention impressed with the belief that there were two great matters to accomplish which would meet with the general approbation of the people. One was to give the people of each county every facility possible for the due administration of justice, and the other was to give the people of each county full representation in the lower House of the Legislature. If we can accomplish these, we can go home and ask the people to endorse the action of this body.

I will state that the necessity for ample facilities for justice exists in some counties of the Commonwealth with which I am familiar. I know that the courts of those counties are behind in their business and have been so for several years. In the county of Armstrong, for instance, I went into court to try a cause in the month of March in last year. It was continued on the list. I went again in June, and it was again continued. I went again in September and again in December and the cause was still unheard, although it had been on the list for trial nearly a year; and there are cases behind the one I re-

fer to in that court that I do not believe will be reached for years.

I know, Mr. Chairman, that this Convention is tired of discussion, and I do not propose to continue to any extent. I am not one of the members of this body that have intruded themselves upon the time and attention of the Convention. I believe I have only asked its attention on one former occasion, and that was with reference to the construction of the lower House of the Legislature. I conceive this to be equally important, and I hope to have the attention of every member of this body for a few minutes. In the measure which was presented by the Committee on the Judiciary heretofore, there was a circuit court designed for the relief of the Supreme Court of this State. This substitute which I have submitted is for the relief of the people of the State, and I venture to say that every county in the Commonwealth will hail this as one of the most important measures that has been proposed in this Convention.

The State of Illinois, with a population at least one-third less than ours, with little or no mining or manufacturing litigation, has provided a county court, such as I have provided here; and in addition to that they have provided a circuit court. Is it now asking too much, for this mighty Commonwealth, this nation as I might call it, to give the people of each county a county court, so that they may have at all times the opportunity to throw these courts open, and so that the people may be enabled to go through their business in a reasonable time without the accumulation of unnecessary costs? The administration of justice in a State like this is of vast importance. It is not to be passed over slightly. Men are brought to your county towns a distance of twenty-five, thirty and forty miles, kept there weeks after weeks, placed under large expenses, and then they are obliged to go home without having had a trial of their cases. And why? Because it is utterly beyond the power of a single judge of our district courts, as they are now constituted, to try more causes than they do annually. Take, for instance, the district from which my friend from Indiana (Mr. Clark) comes. The judicial district in which he lives is comprised of Indiana, Armstrong and Westmoreland counties, with a population of 140,000. Is not that too great a district to be imposed upon any one judge? I undertake to say that the great labor of that district prematurely termi-

nated the life of one of the best men in this Commonwealth, the late Hon Judge Buffington. He was not able, although a vigorous man at one time, to get through with the load of business that was upon his shoulders and finally sank into a premature grave, for although he had reached a good old age his constitution would have carried him many years more had he not failed under the excessive labor and responsibility which his judicial position required at his hands. And as that district is now constituted, although a young man is presiding over it, and although that young man is in good health, it will, I predict, cause him to sink under the incubus that rests upon him; and the same is true of other similar districts where the business is too great for the grasp of any one court as now constituted.

Look at the ill-adjusted arrangement of the present districts in the State. In the county of Westmoreland there is a population of fifty-seven thousand. In the county of Indiana, the population is probably thirty-six thousand. The county of Armstrong has about forty-five thousand. That is only one district, yet in the county of Crawford Judge Lowrie presides over a district composed of that county alone, with a population of sixty-three thousand or sixty-five thousand. You see how very unequal in representation is the judicial force of these districts, and how great the necessity for making some equal representation of that force in all the counties of the Commonwealth.

But I am not here for the purpose of tiring the patience of this Convention. I have submitted this substitute in the hope that the committee of the whole will not pass it over lightly, but that they will regard it as a measure that the people demand for the arrangement of their judicial districts.

Mr. WHERRY. Mr. Chairman: In the discussion upon the article reported by the Committee on the Judiciary, I have, I think, shown that modesty which is becoming a layman. So far as the mere organization of the courts is concerned, I have had nothing to say. So far as the questions debated involved the honor and the emoluments of the judges or the advantage of the attorneys, I have had nothing to say. But whenever this subject begins to touch the dear people, of whom I am one, I desire to say a word.

I have listened in amazement to some of the vagaries in political science ad-

vanced upon this floor in the discussion of this judiciary article. We should be forced to believe, if we credited all that has been said upon this subject, that the people have no concern whatever in the establishment of the judiciary. Against that idea I desire to protest. The establishment of the judiciary, in my judgment, implies on the part of the people three necessary conditions.

In the first place, they must be willing to accept it. The shoemaker works in vain if his customers cannot wear his boots. So will this Convention have worked in vain if the people refuse to accept the judiciary system that we establish for them.

In the second place, the people must be willing to do what is necessary to maintain the judiciary. If it be adopted and be found to work badly, they will not sustain it; they will refuse to give it their moral sanction and support.

It the third place, the people must be both *willing* and *able* to do all that which is necessary to make this judicial system perform the purpose for which it has been organized. Could justice be administered in a court of justice if all men were liars, if your witnesses refused to testify, if men wilfully perjured themselves, if juries gave verdicts contrary to the facts? I say that for the successful establishment of a judicial system, these three conditions are requisite, and in my judgment, speaking as a layman, any judicial system, however fine in theory it may be, however perfect you may make it in detail, which overlooks or ignores these points of contact with the people, must utterly fail of giving a wholesome administration of justice.

For, sir, however it may conflict with the philosophy and war with the prejudices of a class of political teachers on this floor, in the judicial department of the government, equally with every other department, as in mechanics, the power which keeps the engine moving must be sought for outside the machinery. That power, operating through every department of government, is the intelligence, the virtue, the moral sense, the innate love of right and justice of the people. Judicial machinery, judicial contrivances and rules of court, can have no efficacy unless sustained by the moral sanction and political support of the people. The goodness of an administration of justice is in compound ratio of the worth of the men composing the tribunal and the



worth of the public opinion which controls them. A good system will not be a pure abstraction, it will not be an "ark of covenant" that dare not be touched by the hands of common men. It never can be better and it never ought to be better than the aggregate goodness of the men composing it and the men for whom it is provided. But a good system brings all the moral worth of the community to bear upon the administration of justice and makes it operative upon the result.

Now to the immediate question under consideration, I remark, in the first place, that as much of the business of our district courts is of that character that both the facts and the law are to be decided upon by the court it would be unwise, not to say unsafe, to vest so much discretion in the person of one man. The right of widows and orphans are to be sacredly preserved. Executors, administrators, guardians, committees, trustees, auditors, view-ers are to be appointed, and the court must pass upon the character and qualification of each and every such appointee. Besides most, if not all of these, are required to give bond for the faithful performance of duty and the court must severally pass upon the character and financial ability of the bondsmen. Are not these great powers involving great responsibilities? Would you leave them to the unguided judgment of one man? Why, sir, it is accounted a responsible office to try causes, instruct juries in the application of law, administer justice with the aid of counsel and jury; but here, sir, is a power ten times greater which some would leave depending upon the will of a single judge.

This, sir, in effect, would be but to establish a court of chancery, a court in every way repugnant to the wishes and feelings of our citizens and at variance with the settled policy of our State.

Associate judges are indispensable links between the court and the people, and are for the good of the court and the people. They give the people confidence in the decisions of the court. They preserve the court from falling into many and unintentional errors of judgment. They divide the responsibility of judgment with the president judge in case of great doubt or great popular clamor, thereby relieving him of much unjust odium.

And, lastly, every honest, God-fearing judge I ever knew and talked with, wanted these associates by his side; wanted, if not their intellectual, at least their

moral support; wanted their intuitive sense of justice as a mirror in which he might reflect the image of his purely mental or speculative judgment.

I move to amend the amendment of the gentleman from Allegheny, by striking out the words "associate judges are hereby abolished."

Mr. FULTON. Mr. Chairman: I had desired to offer an amendment or a substitute for this section, but I suppose it would not be in order now, as an amendment to an amendment is already pending.

I agree with the delegate who sits at my right, (Mr. S. A. Purviance,) who offered the original amendment, that this a question of importance, and one that we should approach with very great caution. During the entire history of our Commonwealth one of the boasts of the State of Pennsylvania has been her judiciary. Whilst charges have been made against every other branch of our government of impurity and corruption, the judiciary of the Commonwealth has always stood above suspicion; and I say now that it should be with great care that we would undertake to entirely revolutionize the judiciary of Pennsylvania. There are two aspects of this case that I desire to call the attention of this committee to. The first is the effect that this section would have upon the election of our judiciary.

I ask that we all go back about a month in the history of this Convention and recall the discussion of the apportionment of the Legislature in this city, when it was agreed here by common consent that the representation of the city of Philadelphia from the adoption of the amendment to the constitution in 1857, cutting the city up into single districts, has gone back every day; and this is the very thing that is now proposed to be done with the judiciary all over Pennsylvania; to cut up our State into small judicial districts, and I ask you to answer the question by this vote, whether it is not the universal rule that the smaller you make the districts for which men are elected to fill any position, the smaller you make the men that obtain the positions.

It was said here the other day in discussing this question in a rather different form that if the section then under consideration, was adopted, it would make our judiciary political; it would put political judges upon the bench. Now, will it not have such an effect to a far greater extent than the section then under

consideration, if you cut up the State into counties of 25,000 or 30,000 as separate judicial districts? If you look over the counties of the Commonwealth, you will find that there are not three counties that are not so decidedly either Democratic or Republican that all a man has to do is to get a nomination in the county, and if you cut up the districts to that size the very smallest sized lawyer in the Commonwealth will start and canvass his county and secure the nomination, and be elected judge. I ask gentlemen to consider whether this is not the very thing that will put our local politicians upon the bench.

What effect will it have upon our courts? It is urged by the gentleman who introduced this amendment that it will enable us to have our business done with dispatch. Suppose we retain our districts as they are and give them a judge for say every 40,000 or 50,000 population in a district. Our districts are formed of two, three and four counties over the Commonwealth. My own district and the district of the gentleman from Indiana (Mr. Clark) have been run in here as an argument. What would the effect be there upon our courts if our district was divided into three districts, each of the three counties in the district being large enough to come within the provisions of this section? Every ten years we have to elect a new judge. It is known to every gentleman in this Convention that when we do elect a new judge in a district or in a county he is chosen from the members of the bar, and in nineteen cases out of twenty from the members of the bar in that county; and not only that, but he is taken from the best practitioners, from among the leading members of the bar. You put a man upon the bench who is concerned, perhaps, in over one-third of the cases on the docket in that county, and the business of that county is interrupted at every term by cases coming up in which your judge is concerned. He cannot try them, and you have to wait until such time as you can borrow a judge from an adjoining district to come in and try them. Suppose we put judges enough on the bench in that district to give a judge for each county, what then? I think two would be amply sufficient to do the business of the counties in the district; and one of the judges lived in my county and the other in Indiana county, let them change back and forward; they can try each other's cases without the slightest inconvenience or interruption of

the business of the court. But again, following that same district still further, we find that the county which I have the honor to represent here has about 60,000 population at this time. We find in that county two hundred miles of railroad and large coal operations, with some fifteen or twenty large corporations there engaged in mining coal. All these things are provocatives to litigation, and the litigation in our county is increasing every day. Go over to the adjoining county of Indiana, and you find there about 36,000 population, an agricultural county with, I dare say to-day, not business enough to keep a judge engaged one-fourth of his time. Within the next three years one judge in our county will not be able to attend the business of the county. A judge in our neighboring county, now in the same district, will be sitting there three-fourths of his time idle. Is there any economy, is there any wisdom in making such a change as this in our judicial district at this time? Is it not better to elect sufficient judges in the districts where they are and to leave it to the Legislature, as it has been, to make such changes as from time to time may become necessary?

Mr. Chairman, I hope that this section will not meet with the favor of this committee, because I fear that it would have the worst effect upon the judiciary of our Commonwealth of anything that this Convention can do.

Mr. METZGER. Mr. Chairman: I agree with much that has been said by the gentleman who last spoke; but in the main I cannot agree with him. The gentleman took the position, if I understood him correctly, that if this amendment should be adopted, it would belittle the office of judge and that proper men would not be elevated to the position. It seems to me that in his own county, a man must be much better known than he would be in the other counties of the district, where the district consists of several counties; and I do not, therefore, see why a worse man should be elected in his own county than in a district composed of several counties. As the gentleman said, usually members of the bar in each party select the nominee, and generally the best man in the county is selected for the position, for being very well known, and being thus selected, even in counties where the election is sure, and where the parties are so divided that either one party or the other is so strong that a

nomination is equivalent to an election, we should come to the conclusion that a better man would be apt to be selected than where you elect in districts. Again, in counties that are close, there would be still greater inducement for the selection of a better man, because in that event, members of the bar irrespective of party, would unquestionably throw their influence in favor of the man who was the most competent to fill the position.

I even go further than the amendment and say that every county ought to have a judge, and those members of this Convention who have had experience in that respect, who have practiced in judicial districts composed of different counties, and who have also practiced in districts composed of single counties, will bear testimony with me to the difference in favor of the single county system.

A few years ago in the district in which I am practicing we were connected with several other counties. Our business was so much delayed that our appearance docket was nearly four years behind. We could not have the courts as often as we wished them, we could not have courts when we desired them, because it interfered probably with the business in the other county. Afterwards the district was abolished, and Lycoming was made a district by itself. Since then, although the business has been sufficient to keep the court busy, we have so worked up our business that we are now only about a year behind. We can have our courts when we desire them. We can have our courts at any time to hear motions and dispose of arguments, and the convenience which this gives us cannot be overestimated by any practitioner. Under the previous system, parties, in consequence of the delay attendant upon hearing their causes tried, have frequently settled them to a disadvantage and suffered injustice rather than wait, but now they can have justice administered to them speedily, as it is the right of every citizen to have.

I am therefore strongly in favor of the proposition of the gentleman from Allegheny (Mr. S. A. Purviance) except that probably the number of population fixed by him is a little too small. Twenty-five thousand would probably not give sufficient employment to a court. I hope therefore that the amendment will be modified in that respect before a vote is taken and that some other number will be fixed.

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As regards the amendment which was proposed by another gentleman striking out the abolition of the associate judges, I heartily approve of that also. There are cases in which, in my opinion, associate judges are almost indispensable. There are cases in which they are better informed upon questions of fact than the president judge can be. The president judge, who is a lawyer, and who was probably a stranger in the district over which he presides until within a few years of his election, and whose information in reference to the wants of the various localities is by reason thereof limited, is not in a position in which he can always act as discreetly and as properly as the associate judges can, who are selected from among the people, and generally from different sections of the county. Usually it is the case—it has been the universal rule in our district—to select one associate from one end of the county and another from the other; the president judge residing in the centre or at the county seat. Thus the different sections of the county are represented upon the bench, and the judges have that information in reference to the wants of localities which enables them to decide in reference to questions that may arise before them where certain information may be necessary before they can decide wisely and properly.

But, in addition to this, as has been well said by the gentleman from Cumberland, (Mr. Wherry,) the people have come to regard the associate judges as necessary incidents of the court, and they are, in my opinion, a link between the court and the people which, if properly managed, will not only inspire confidence in the court, but will bring to the court that assistance and information which is sometimes necessary in order to enable them to come to a wise conclusion.

When I am told that they are of no use, that they cannot in any manner assist the court or promote the ends of justice, I reply that in my short experience at the bar I have seen instances in which they have prevented gross injustice by deciding against the president judge upon questions of fact. I know an instance of a case which was brought in court where a gentleman of high standing was convicted of the crime of seduction, and if the testimony of the prosecutrix at the time had been correct, it was a most outrageous case. I was concerned at the time for the prosecution. A motion was made for a new trial on the ground that

the prisoner had not had proper time to prepare the cause and that he had testimony which, had it been possible to produce on the trial, would have shown beyond a reasonable doubt, in fact conclusively, that he was innocent of the charge. The president judge having become impressed by the testimony of the young lady on the stand of his guilt, refused a new trial, but the associate judges over-ruled him and a new trial was granted. In a very few months after the granting of the new trial, that woman was delivered of a child, which proved the fact to have been that that child must have been begotten months before she knew the prisoner at the bar. In that case, that young man, who stood high in the community, and who but for the interposition of the associate judges would have been sent to the penitentiary, was saved from disgrace and from eternal infamy.

Then again there are other cases. We all know that in pauper cases the court decide upon the facts as well as the law. We know that in those cases the facts are all submitted to the court; and while I do not undertake to say that the associate ought to interfere with the president judge upon questions of law, I do undertake to say that when it comes to questions of fact, they are as competent and even more competent to determine them than a man whose whole life has been spent in conducting law suits; because the profession of the law has a tendency to make a man partial, and when he comes to deal with facts purely, he is not, in my opinion, as capable, in many instances, of judging as are men of sober, sound common sense, who do not pretend to know any law.

There are various other cases, as the chairman well knows, such as motions for new trials, in which very frequently questions of fact are to be determined by the court. There are cases of motions to open judgments, rules to show cause, in all of which the court must take into consideration the facts; and very frequently, in fact in the majority of instances, facts alone are the basis of the application.

Now, I say that I am unwilling, for one, to submit to a single lawyer on the bench the determination of all the questions of fact upon which a court from time to time is bound to pass. I am unwilling to submit to a single lawyer sitting upon the bench the question of my liberty at all times. When he is vested with the discretion which the law vests in him in

passing sentence, when he can imprison me one year or ten years, I want the interposition of men bound by ties which connect them more intimately with the people, rather than submit my fate to a single lawyer sitting upon the bench. I say that in all these matters of discretion, the associate judges are indispensable to keep that balance upon the bench which I apprehend is necessary to promote the ends of justice.

The CHAIRMAN. The Chair is obliged to remind the delegate that his time has expired.

Mr. METZGER. I am done.

Mr. DE FRANCE. I do not rise, Mr. Chairman, for the purpose of discussing this question at any great length. I merely wish to call the attention of the committee to the importance of this amendment. In my opinion, there must be some such amendment as this adopted, or else we must retain the associate judges. I do not know that the number is precisely right; but there must be something of this kind adopted or else we must retain the associate judges. I think if we adopt some system of this kind justice will always be speedy in the county; that is, if we make proper selections for judges. They can do all the auditing and all the road business and every thing else; and if they reside in the county, they could serve as judges for much less salary than they do now, moving around as they do in districts. The most expensive part of the duties of judges now is the cost of traveling through their districts.

I think that the committee ought to consider carefully this amendment of the distinguished gentleman from Allegheny (Mr. S. A. Purviance.) If it is not adopted, or something very nearly like it, I shall vote for retaining the associate judges. I think thirty thousand as the number of population required is rather small, although it would give more of the counties judges. There are plenty of good men who will be anxious to obtain the honor of being a judge under this system, and we can afford to pay the judges pretty nearly as much as the district judges now receive, if we do away with the associate judges.

In view of these facts, without discussing the matter at any great length, it seems to me that we ought to consider well this plan. It must be remembered that no plan has yet been adopted to render the business of the Supreme Court

any less than it now is. If we have the proper kind of judge in every county he can consider every case with the greatest care; he can examine all the authorities upon it; he can keep up the business of the court within three months all the time if he wishes to do so; and after he has considered every case carefully, I think there will be but few cases go to the Supreme Court. We have decided that we will have no intermediate court, and in that I concurred.

For these reasons I shall vote for the amendment of the gentleman from Allegheny, and I hope it will be adopted by the committee.

Mr. BAER. I rise to endorse the amendment of the gentleman from Allegheny, for I believe it is a step in the right direction. As he so well said, next to our providing against special legislation and protecting the people against monopolies and corporations, there is no other thing in which they have a greater interest than a judicial system, and especially that which will bring home to the doors of each man a court to which he can resort when he is injured in person or property.

It has been argued here that it will be better to have the districts composed of a number of counties, with a number of judges in the district. Those who have had no experience in that way will find to their sorrow after they get two or three judges in a combination of counties to hold courts alternately that, instead of benefiting the administration of justice, they simply injure it.

We have a district in which we have two judges, and they are eminent men. We have not a word of complaint as to the qualifications or business capacity of either; but we have this to complain of, and I apprehend the same trouble will be found everywhere where causes are tried in the same manner; we do not get along as fast now with two judges on the bench as we did in the days when Judge Black presided over the entire district; and yet I venture to say we have not as much business to-day, certainly not of the same character, as we had in those early days. The trouble arises from this cause: The judges, living as they must in one or the other of the four counties, must travel from county to county; and so far as our county is concerned the courts can only open at about two o'clock on Monday. That is about equivalent to no session on the first day, for the reason

that the judges do not deem it proper to travel on Sunday, and there is no train that can connect so as to reach us before that time on Monday; but the jury is there, the suitor and his witnesses are there, the expenses of the court go on, and yet there is no business done on Monday. When Saturday comes the judge of the court becomes impatient and anxious to get home, and we have found by experience that if there is an important case to be tried it is not safe to let it be called on Saturday. The result is that on Monday and Saturday very little business is done, and instead of a week's court we have but four days; cases must be continued, and are continued, from term to term; costs are multiplied, and the people have to pay them. Will you tell me that the people will less readily pay compensation to the judges of the Commonwealth than they will these accumulated costs in consequence of the delay? They would much rather pay double the number of judges, and have justice administered speedily, than they would pay for a less number of judges and make up a greater amount in accumulated costs both to themselves and the county.

But that is not the only objection. One of the judges holds court during one term, and as every lawyer must be conversant with the fact, a question arises that during that term is not decided. The judge who then presided takes the papers with him to determine at some future day. If he does not come to hold the next term of the court, those papers are not there, and the decision is not rendered, and the case goes over, and goes over to another term. If at the next term he is there, the case goes on; if not, and his associate is there, it is continued again. Thus there is continuance after continuance.

The people of the interior are complaining of this style of administering justice; they prefer that there shall be a judge in each county. The limitation of twenty-five thousand I apprehend is about the right figure. It should not be any less; nor do I think it should be much more, because, by placing a law judge in each county, you can dispense with the associate judge and can safely abolish that office. If the judge has not enough to do, you can, by law, give him some other duties. He can be judge of the orphans' court as well as of the common pleas. He might possibly attend also to all the business of the register's office, and in that

way his time could be profitably employed and to the advantage of the people.

If that is not adopted, how do you justify the enactment of the twenty-sixth section which abolishes the office of associate judge? To do so would be manifest injustice to many portions of the State where no president judge of the common pleas resides. You are compelled for all the small minutiae, for all the chamber business, to travel out of the county to hunt up the person who alone is authorized to stay a writ, and during the time you will be hunting the judge, very manifest injustice may be done to the citizen of that particular district, who is in search of justice.

In order to avoid that difficulty, if we wish to dispense with the associate judge, not learned in the law, let us have a law judge in each county. The people will endorse it. They will take more pleasure in endorsing our Constitution, and this will bring many men to the support of it whom possibly we could not get in any other way. If this is voted down, then, although I see no necessity for associate judges in places where you have the common pleas law judges, yet I shall be compelled to vote against the original section in order that we may have some person in our county to exercise the duties that are now devolved on these officers. I hope the amendment of the gentleman from Allegheny will be passed.

MR. BOWMAN. I rise, sir, for the purpose of making the inquiry whether an amendment to an amendment is in order.

THE CHAIRMAN. It is.

MR. BOWMAN. I move to strike out "twenty-five" and insert "thirty."

MR. WHERRY. There is an amendment to the amendment pending.

THE CHAIRMAN. The Chair did not understand the delegate from Cumberland to offer an amendment. The delegate from Cumberland is correct, however, as the Chair is now informed by the Clerk. An amendment to the amendment is pending, and therefore the amendment of the delegate from Erie is not in order.

MR. BOWMAN. Very well; but as I have the floor I wish to make a few remarks. I am inclined to favor the proposition presented by the gentleman from Allegheny with the modification I have suggested. I am inclined to think twenty-five thousand is too small a number as the limitation; hence I would make it thirty thousand, and for this reason: I find by reference to the population of the counties

that we have eighteen counties containing less than twenty-five thousand inhabitants. I find upon a further examination that seven of the counties containing less than twenty-five thousand inhabitants happen to be located in juxtaposition geographically. There are Potter, M'Kean, Cameron, Elk, Warren, Forest and Jefferson, containing less than twenty-five thousand inhabitants. The territory embraced in these seven counties could be formed into two judicial districts, all of them joining geographically. The county of Warren approximates near twenty-five thousand inhabitants, and, perhaps, contains that number of population to-day. I am in favor of the formation of separate judicial districts by providing that each county containing a population exceeding thirty thousand shall be formed into a district. I think it will have its advantages. In the first place, we shall have one judge to preside over the court of common pleas, instead of two as we have now. I think that every practicing attorney who has had anything to do in the courts since we have elected associate law judges, is aware of the fact that it very frequently happens that in our business in the court the judges do not agree upon the same question. A question is decided to-day by the presiding judge in the court, and next week or at some future time the same legal proposition is presented to the other judge, and he may take a very different view of it. Hence the decisions are left uncertain; and in the large districts where we have two judges this plan would obviate the necessity of performing the amount of travel that they necessarily have to perform at present.

And, sir, I am opposed to the original section abolishing the associate judges in the State not learned in the law, unless the substitute presented by the gentleman from Allegheny prevails. Every gentleman must know very well that it is absolutely necessary to have a judge in the county. Where would you go to have a writ of *habeas corpus* issued? Out of your county, it may be fifty or one hundred miles. To do that you have to go before a judge. So to get a rule to stay an execution in the hands of the sheriff; it would compel you to leave the county where the writ issued and go to an adjoining county in your district and find some judge that could grant a rule to stay proceedings for the time being until you could have a hearing in court. It is important that in the counties which are

not separate judicial districts, we should have a judge to perform these judicial functions, and many others that might be mentioned.

Now, Mr. Chairman, I hope the gentleman in front of me (Mr. Wherry) will so modify his amendment that we may be able to get before the committee this proposition: That in all counties containing a population of thirty thousand inhabitants, we may have a separate judicial district. I think twenty-five thousand is too small; it will not pay the expenses of the court to be run in these small counties. With this modification I shall heartily support the proposition of the gentleman from Allegheny.

Mr. LILLY. Mr. Chairman: I agree with what the gentleman from Erie, (Mr. Bowman,) has said, excepting that I think 30,000 is too small. 25,000 is too small, and I think 30,000 is also too small, and for this reason: Carbon county comes very nearly up to the 30,000, and I am very sure there is not business enough there to keep a judge employed half the time. I think 30,000 is too small. I would rather see the limitation 40,000, and in that form I should be in favor of the proposition of the gentleman from Allegheny. I believe it is necessary in counties where you have so much population to have associate judges, either one or more. I am in favor of the proposition with the alteration, running up a sufficient population to employ the judge.

Mr. S. A. PURVIANCE. Mr. Chairman: For the purpose of having a test vote on the principle embodied in my amendment, I will withdraw the proposition as to the number 25,000, leaving that a blank in the amendment.

The CHAIRMAN. The delegate from Allegheny is informed that he cannot do that now, inasmuch as there is an amendment to his amendment pending.

Mr. CLARK. It may be done by consent.

Mr. S. A. PURVIANCE. I ask leave to modify my amendment by striking out 25,000, leaving the number blank, until we pass on the proposition itself, and then the committee can fill the blank.

The CHAIRMAN. The Chair will inform the delegate from Allegheny that he may withdraw the words "25,000" and leave that blank, but that still leaves the amendment offered by the delegate from Cumberland before the committee, as an amendment to the amendment.

Mr. WHERRY. To relieve the difficulty I should be very glad to withdraw my amendment to the amendment for the present.

The CHAIRMAN. The delegate from Cumberland withdraws his amendment to the amendment for the present.

Mr. BOWMAN. Then I move to insert 30,000. ["No." "No."]

The CHAIRMAN. The delegate from Erie moves to amend by filling the blank with "30,000," the number being now blank.

Mr. BOWMAN. Well, I will withdraw it until we can get a vote on the main proposition.

The CHAIRMAN. The question recurs on the amendment of the delegate from Allegheny.

Mr. FULTON. I move to amend the amendment.

Mr. WHERRY. Permit me to say that I think this is not quite right.

The CHAIRMAN. The Chair cannot regulate understandings between gentlemen.

Mr. WHERRY. I withdrew my amendment to allow the amendment of the gentleman from Allegheny to be modified.

The CHAIRMAN. The amendment of the delegate from Cumberland was withdrawn, and the Chair cannot prevent another delegate from offering an amendment. The delegate from Westmoreland moves to strike out the amendment offered by the delegate from Allegheny and insert what will be read.

The CLERK read the words to be inserted, as follows:

"Until otherwise provided by law, the common pleas districts shall continue as they are. Each district shall be entitled to one judge for every 50,000 of its population, the manner and terms of election to meet increase of population to be fixed by law. Unless there be more judges than counties in any district, no two judges thereof shall, during their continuance in office, reside in the same county. The judges shall have the right to select counties of residence in the order of the date of their commission. The right to preference between those holding commissions of the same date shall be determined by lot."

Mr. CLARK. Mr. Chairman: I have but a few words to say on this subject. The question is very distinctly raised here by the amendment of the gentleman from Westmoreland between single districts and districts containing more than one judge. I am very clear in my

own conviction that the single district system is the better plan.

The amendment offered by the gentleman from Allegheny embodies that system I think in very clear and comprehensive language; and now that the number of inhabitants necessary to constitute a single district is stricken out, and left blank, we have the one principle arrayed against the other, unembarrassed by any figures whatever. It will be observed that the system proposed by the gentleman from Allegheny is a flexible system. It provides for the election of a single judge in every county having a given population, and as many additional judges as the Legislature shall find the business of the district requires.

This is a flexible system which will yield to suit the wants and necessities of the people and which can be regulated without any difficulty whatever. It provides further that counties containing a population less than is sufficient to constitute a single district shall, if it be practicable, be formed into convenient single districts, carrying out the same principle which is embodied in the first part of the amendment; and if necessity requires it, if a county containing a less population than the amount fixed cannot be conveniently connected in a single district it may be attached to a district having a judge.

Further than this, it is manifest to all members of the bar, who have been in the regular practice of the law in this State, that it is absolutely essential that we have a judge within the limits of every county, whether that judge be a president judge, a law judge, or an associate judge not learned in the law. One of them is essential to the successful and convenient practice of law.

I think, if I discover any sentiment in this Convention, I see almost a unanimous sentiment here to abolish the system of associate judges not learned in the law; and if we do we are reduced to the absolute necessity of providing a law judge in every county of the Commonwealth as far as practicable. Hence my friend from Allegheny has embodied it in this provision "that the office of associate judge not learned in the law is abolished excepting in counties not forming separate districts; but the several associate judges in office when this Constitution shall be adopted shall serve for their respective terms.

I say, then, that this is a flexible system which will carry out its own provisions

and accommodate itself to the wants and necessities of every community and every judicial district. We have fairly presented before us here the respective merits and demerits of the single county judicial system and the triple system presented by the gentleman from Fayette (Mr. Kaine,) or any other system embracing two or more judges and two or more different counties in the same district. I think it is clear to every lawyer who has practiced law in this State, that where you have a number of judges alternating on the bench in a country district, (the same difficulty does not exist in the populous counties and in the cities,) and an important application is made before one of these judges—Judge A, for example; perhaps it is complicated by many questions of fact; perhaps it is complicated in the application of the law to those facts, and it will require a discussion of half an hour or an hour to adapt it to the comprehension of the judge on the bench; he makes some preliminary order, perhaps regulating the form or manner of giving notice to one of the parties. Three months run around—about the interval between our courts in the country—and Judge B is upon the bench. Then you call up your application as you left it on the previous occasion. Judge B requires that same argument of an hour in length. The facts are all unknown to him. He cannot know what was discussed before Judge A as he was not present at the previous argument; he was at that time holding court in some other county, and he does not know anything about it; consequently the attorney is put to the duty of re-producing the facts and applying the law in this same case over again for the information and benefit of Judge B. Perhaps upon more reflection he thinks that he would not have made the order that Judge A made, but inasmuch as he has commenced the case, inasmuch as he understands it fully and completely, he will hold it over; three months more run round, and then perhaps we have Judge C on the bench, and we have the same trouble. Thus we have an interval of nine months from the time the application was originally made before you make any sort of progress in it at all. This practical difficulty would not occur in the city, for your judges live next door to each other, meet each other daily in their professional intercourse or on the bench, and can confer and compare notes and dispatch business; but in the country with



a judge living in one county, a second judge in a second county, and a third judge in a third, where they have not the means of communicating with each other readily, we have all this inconvenience.

Again, we have a motion made for a new trial; after having pursued your adversary to the end, driven him to the wall and brought him up to the bar of the court and recovered a verdict, a motion is made for a new trial. That motion must necessarily be argued before the judge that tried the case because he only knows the facts of the cause, observed the bearing of the witnesses, and understands the merits of the motion. That motion, perhaps from the press of business, was not disposed of when he was on the bench, and when the next term comes around you have a new judge. He did not try that case; he knows nothing at all of the facts. It may have consumed a whole week in eliciting the facts. He knows nothing about them. He cannot hear a motion for a new trial; he is incompetent to hear it; he knows that he is incompetent to hear it; he declines to hear it, and it has to go over three months. In the country we would be subjected to all this delay under the system proposed by the gentleman from Westmoreland (Mr. Fulton.) I think, Mr. Chairman, that we can be accommodated in no way so well as for every county to have its own judge before whom all of its cases can be tried, by whom all the adjudications can be given. He will of course reside at the county seat of the county and we can make our applications in vacation; we can have our important causes in equity and other important causes discussed before him at length at chambers.

We can have our business dispatched and the progress of our cases advanced very much by having in each county its own judge, agreeing on some standard of population, whatever may be adopted. We will thus avoid all the delay which any other system affords. It is very well known that the defence of a rascally litigant is delay. As soon as you dig him out of one hole he crawls into another, and if he can find as many lairs as will keep you digging him out until he is insolvent, he will resort to them all. The pride of Pennsylvania heretofore has been that we have had a single court of first resort and a single court of last resort, and that there are only two places in which any delay can be interposed. Do not let us adopt a system of alternating judges upon our

benches in order to make trouble, *cause delay* and add expense.

Some reference has been made this morning to the judicial district in which I reside. It reaches from Parker's Landing to the spur of the Allegheny mountains, and from the county of Fayette, which lies upon the southern border of the State, to the county of Jefferson. It contains a population of one hundred and fifty thousand or thereabouts, perhaps more, certainly not less; we have but one judge and we never have had more. It is a fact that we are behind some five thousand causes in that district and a suit brought to-day will probably not be tried for three or four years. This is the hole that our litigants crawl into. We want the Convention to fill it up and we want it filled up by adopting a system which will put a judge into each county of our district. I am sure I cannot be charged with any selfish purpose in this. I live in Indiana county, and that fact is sufficient to satisfy the committee that I have no selfish purpose in view. [Laughter.] I am sure I do not desire anything selfish in this; but we want a judge in our own county, a judge to whom we can resort on all occasions and at all times for the dispatch of our business, and I think that no objection will be made to this by my constituency—who only desire to have their business speedily and properly disposed of. I hope therefore that the system embodied in the amendment offered by the gentleman from Westmoreland (Mr. Fulton) may be defeated and the system suggested by the gentleman from Allegheny (Mr. Purviance) may be adopted by the committee.

I heard the earnest and very able effort of my colleague from Westmoreland (Mr. Fulton) but I think I know the feelings and wants of my constituents. I feel quite certain that nothing could be done to advance the interests of the profession in our community more than to adopt this separate system and fix the amount at whatever the Convention in its wisdom may think best. Our county has a population of 36,000. The principle is what we are after, and we think we shall prevent this unreasonable delay and accommodate the wants of the people of our district and of every other district in the Commonwealth better by this system than by any other.

Mr. M'MURRAY. I wish to make some remarks on this question, but it is about one o'clock.

Mr. DALLAS. Mr. Chairman: I move that the committee of the whole 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 (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. DABLINGTON. I move that the Convention take a recess.

The motion was agreed to; and (at one o'clock and four 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. DABLINGTON. I move that the Convention resolve itself into committee of the whole on the report of the Committee of 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. When the committee of the whole rose they had under consideration the twenty-sixth section. To this an amendment was moved by the delegate from Allegheny (Mr. S. A. Purviance) and an amendment to the amendment was moved by the delegate from Westmoreland (Mr. Fulton.) The question is upon the amendment to the amendment, and the delegate from Jefferson (Mr. M'Murray) is entitled to the floor.

Mr. M'MURRAY. Mr. Chairman: The discussion on this question shows two facts. The first is that this Convention will abolish the office of associate judge, and the other is that we need more judicial force in the State. Then taking it for granted that associate judges will be done away with, and that we need an increase of judges learned in the law, this becomes a grave practical question. Before abolishing the present system, or materially modifying it, we should find a better one. Is either of the plans before us better than that now in use? or if they are both better, which of the two proposed is the better one?

Associate judges were created in the early history of the State from necessity. Judges learned in the law were few, and had to hold court in many different counties. Judges were often needed to do certain things when it was very inconvenient to reach a law judge, and to meet this want these judges not learned in the law were authorized. And it was further thought that they would be of use to the law judges in assisting them to determine questions of fact, as in the case of applications for new trials.

But it seems to me that the necessity which required the creation of the office has passed away, and we can meet the wants that they were intended to meet in another and better way. I grant their usefulness in the matter of hearing applications for and granting new trials. I think questions of this kind would be better determined by two or more judges than by one, for if a mistake is made there is no mode of redress. It is a grave matter to put so much power and responsibility in the hands of one man. The plan proposed by the delegate from Allegheny (Mr. Purviance) has, to my mind, this objection. But the amendment offered by the delegate from Westmoreland (Mr. Fulton) relieves us of this difficulty, for by it we will have two judges in every district in this State; and in many more than this number. It might be so modified as to put a law judge in almost every county in the State by a slight rearrangement of the districts. Then these judges could meet in each county at least once in every two months to hear motions for new trials, and do all that would require the intervention of associate judges. I stop here to inquire whether this would not be better than to leave all to the judgment of one man? It is a question that affects almost every person in the State sooner or later. We must render an account to the people for every change we make. When I leave this Convention and go back to those who sent me here I want to be able to give a respectable reason, nay, a good and sufficient reason for every change I have assisted in making. I want to be able to show them that what we offer is better than what we propose to take away.

By this amendment you say that associate judges are not needed in a majority of the counties in this State. I grant this and go further, and say they are not needed in any county in the State. Without any disrespect to the men filling these of-

fices—for I acknowledge that they are men of virtue, men of intelligence, and men of honesty—I think the office of associate judge, filled by men not learned in the law, and who have the right to pass upon judicial questions, is a nuisance. In a majority of cases that come before them they are entirely useless; and I cannot imagine why they should be retained unless it be for ornament, and they are rather costly for that.

Mr. WHERRY. May I ask the gentleman from Jefferson a question?

Mr. M'MURRAY. Yes, sir.

Mr. WHERRY. I suppose they would not be a nuisance unless somebody has complained of them.

Mr. M'MURRAY. They have entailed a large cost upon the State, and in many instances have prevented right from being done.

Mr. WHERRY. The gentleman does not answer my question. I ask who has complained of these associate judges being a nuisance?

Mr. M'MURRAY. I will answer. In many cases that come before the courts, as on applications for license, it happens from time to time, in fact it is almost the rule, if not entirely so, that these judges are approached out of court, and are importuned to grant or refuse the application. The officer is thus degraded, and the judicial ermine is dragged in the dirt—and in some instances money has been taken by these judges for their action on these questions. These questions are too often decided outside the court instead of within it upon a proper hearing of the cause. Therefore, I think the office is a nuisance, for it works injury and annoyance to the public.

But, Mr. Chairman, those who advocate this amendment want to continue this burden of associate judges upon part of the counties of the State, while the other counties shall be relieved of them. Because a county is small it must continue to bear the burden. Now if they are not a good and useful thing for the large counties, surely they are not a good and useful thing for the small ones. I object to the principle because it bears unequally upon the different counties of the State. It is a species of special legislation. Let us adopt some plan that will bear equally and alike upon every county.

I am in favor of the proposition offered by the delegate from Westmoreland (Mr. Fulton) because it comes nearest that offered by the delegate from Fayette, (Mr.

Kaine,) which meets my approbation entirely. I think that the true judicial system.

It was truly remarked by the delegate from Westmoreland that small districts will give us small judges. This, as a rule, no one can deny. The smaller the county the smaller the number of lawyers you have to select your judges from. In counties with just enough population to bring them within the rule, you have, of necessity, a limited number of persons to select from, for I take it that in practice the judge will almost universally be selected within the district. This is an objection, for in many instances the people would not have the requisite number to choose from to insure the talent, the ability and the fitness that should characterize the man who is placed upon the bench. This would not be felt in large counties like Philadelphia and Allegheny, where lawyers are very numerous, but it would be a serious inconvenience in small counties.

Again, I have another objection. If you make single county districts, you will probably be compelled to select your judges from the bar of the county, and therefore you must take a man, if he is fitted for the position, who is interested in perhaps one-half of the cases in the county. This fact has been referred to before, and it bears properly upon the argument, and it is proper for us to keep these facts before our minds; we ought not to forget them. What is the result? Your judge is interested in one-half of the causes in the county; he cannot hold court there much more than half the time. What is the result? The people of your county are selecting a judge to preside over the courts of some other portion of the State, whilst you have a judge that you never elected, to try the causes in your own county. If we had large districts, this would not be the case. You could have a judge from another county elected by yourself not interested there, all the time to try your causes.

Mr. CORBETT. Will the gentleman allow me to interrupt him?

Mr. M'MURRAY. Yes, sir.

Mr. CORBETT. The gentleman from Jefferson altogether misapprehends the amendment of the gentleman from Westmoreland. It does not propose to divide the State into districts, and give them a plurality of judges at all. It only proposes to retain the districts as they are now constituted, and give them an additional judge for every fifty thousand, so

that I think the gentleman is entirely mistaken as to the objects of that amendment.

Mr. M'MURRAY. I understand the amendment. It is an approach to what I desire, and my remarks I think apply.

Again, there is another idea that I have not heard mentioned. If you have districts composed of three or four counties, the judge has the benefit that he gains by experience in the practice before him of the several bars of these counties, and that is considerable, whereas, if he is confined to his own county, he has no experience save that which he gets from the members of that bar. On the other hand, the members of the bar of the several counties and the suitors of those counties have the benefit of all the experience that this judge gets in going around and presiding over the several courts in his district. This is a matter of a good deal of importance; it is a benefit to the judge and is consequently a benefit to the suitor. It is a benefit to the bar, and therefore it is a benefit to the suitor. It greatly facilitates the transaction of business in the courts, and this is a question we ought to take into consideration in the determination of this matter.

Mr. Chairman, I have no other object here than to do that which is best for all parties in interest, that which is best for my own county and that which is best for every other county in the State. I would not willingly vote for any measure, though it be never so beneficial to my own county, that would be an injury to other counties. I look upon this question in all its length and breadth, so far as I am competent to do so, and I wish to do that which is for the best interest of all concerned.

My convictions, after having heard this matter discussed as far as I have, is against districts composed of single counties and in favor of districts embracing a number of counties, because I think it will be better for the judge, it will be better for all parties in interest, and will greatly facilitate the transaction of business.

Mr. CORBETT. Will the gentleman allow me another interruption? That proposition has been offered in the committee of the whole and been rejected, to make districts of three judges for the State.

Mr. M'MURRAY. We do not know what we may come to yet. The Convention may change its mind entirely on this question, and I hope it may.

Mr. WRIGHT. Mr. Chairman: I am not disposed to favor the abolition of the office of associate judge. It cannot be denied that they are important auxiliaries of the law judges in the administration of justice. There are a hundred questions arising, (matters of discretion,) where the office of associate judge is of the highest possible importance. In pure questions of judicial discretion, they are a relief and an aid to the president of the court.

Now as I understand the present proposition it is this: Where a judicial district is composed of several counties, there the office of associate judge will be retained, but where a county stands alone forming a judicial district, I understand then you abrogate the office. If that is so, I object to it, because I conceive there will be a necessity even in a county like that. My knowledge of associate judges has been that in vacation and during the holding of courts they are very important. Their salaries are very small and I do not know of any necessity for casting them off. If we undertake to do that, it will array a certain power against the Constitution as we may report it to the people for their action.

I believe furthermore that the amendment that has been offered by the gentleman from Allegheny (Mr. S. A. Purviance) ought to receive our favorable consideration and our votes, but I think we ought to limit it to counties having fifty thousand inhabitants. I apprehend that that would be a fair basis. Every county that has a population of fifty thousand or more should be entitled to a president or law judge, and then one could be furnished for a certain surplus beyond that number. I am in favor of the first part of the proposition of the gentleman from Allegheny, that is to establish more districts. That is a necessity throughout our Commonwealth. Our courts are overworked; they are insufficient in many instances to discharge the business that is brought before them; and some means must be adopted to increase the judicial force. That can be provided better, perhaps, by the plan proposed by the gentleman from Allegheny than by any other that has yet been suggested; that is, that where the population of a county requires it, fifty thousand or more, they shall be entitled to a law judge, and then an addition to that number by a certain ratio that may be fixed and established by this Convention.

The only objection that I have to the proposition is to that portion striking out the associates in counties which compose one judicial district. There will not be a great many counties of that number. There will be associate judges in all other districts where two, three or four counties go to the formation of the district.

Mr. S. A. PURVIANCE. The gentleman will allow me to state that my proposition retains the associate judges in the districts that are grouped together composed of small counties, until any of them attains sufficient population, and then in that county the associate judges become abolished.

Mr. WRIGHT. That is what I object to. There may be half a dozen such districts in Pennsylvania. Why should the associate judges be struck out there? The amount of their salaries will be very small, only a few thousand dollars. They are an aid and assistance to the law judge. If he is absent or sick, and you require an order to be made immediately, there should be somebody to make application to. If the president judge is absent or indisposed and cannot attend to the business, then the business of the suitor must suffer, because there is no person to take judicial cognizance of it. As there are only a few districts now in that condition. I do not see the necessity of striking them out. We are retaining them where two or more counties make the district. Why not retain them where but one county makes the district?

Mr. S. A. PURVIANCE. Allow me to refer the gentleman again to the proposition itself. He will find that at no time and in no county would there be the absence of a judge. That is provided for. Each county will have a judge, either a law judge or an associate law judge.

Mr. WRIGHT. But the judge would not always be in the county.

Mr. S. A. PURVIANCE. Yes, sir, always.

Mr. WRIGHT. He would not be there when he is absent. If he has gone off to the sea shore or to California, if he is sick or anything occurs by which he cannot discharge the duties of his office, then the associate judges can transact the business.

Mr. DARLINGTON. Mr. Chairman: It is somewhat remarkable that so little unanimity exists on the subject of the judiciary amongst so many lawyers as there are here. We are left indeed without any definite idea from the Judiciary Committee itself. I suppose they were

not able to harmonize any better, and they have given us the result in three or four different propositions.

Now, sir, ought associate judges, unlearned in the law, to be retained or abolished? I should suppose there ought not to be two minds amongst lawyers about what should be done with them. They are practically of no use. They are unable to administer justice according to law, because they do not know what the law is, and cannot know. Of what use then are they? Is it supposed they can aid the president judge in the formation of opinions? I have never heard of any one being able to do that since the time of Judge Walker, when Judge Elder, it is said, did assist him in the south-western corner of the State, and over-ruled him sometimes. Who ever heard in his experience at the bar, of the associates, unlearned in the law, giving aid to the president judge in the decision of any legal question whatever? Certainly none.

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

Mr. DARLINGTON. Certainly.

Mr. WRIGHT. I ask him whether he ever read that report from the county of Northampton where the president judge delivered his charge and the associate judge delivered his, and the jury went with the president judge and the Supreme Court went with the associate judge? [Laughter.]

Mr. DARLINGTON. I have heard of cases in which the jury went against the charge of the court below, and there was but one thing to do, set it aside instantly. That is the only thing a judge can do unless he means to deny justice, for then the party has his remedy by a writ of error. Of what consequence is it that an associate interferes in a sporadic case like that? I look at the general effect.

Are they of any service in the appointment of guardians with the knowledge that they have locally? Not any, practically. In our county certainly, in Delaware county certainly, the judge, when he wishes to know whether a man is fit to be appointed the guardian of minor children, appeals to some member of the bar in whom he can confide for his knowledge, or to some gentleman from the neighborhood of the individual, what is the standing of this individual who is proposed as guardian? Is he fit as a moral man, steady, sober and upright, and then is he of sufficient estate? That information is derived from the by-

standers, and unerringly it is acquired with safety.

Again, take sureties in applications to the orphans' court. The same thing may be said there. The president judge may derive local knowledge possibly from an associate judge as to the neighborhood in which he lives, but as to the general business of the county it is not worth anything.

Are they of any use in passing sentence upon prisoners? Very little. The president judge always knows full well what punishment ought to be inflicted when he tries the cause, just as well as if he were aided by the judgment of one or two unlearned men. Survey the subject as you please, look at all the business that they do, and you may easily dispense with them without detriment to the administration of justice.

How is it with regard to the appointment of road jurors? They may be of some little service there; but your county commissioners can be applied to, and they can give you the names of road jurors all over the county in less time than you can get the associate judges together.

Now, does any gentleman know the expense which the State is at annually for these associate judges, these figure heads? They cost us some \$50,000. Are they worth it? Not at all. It does not pay to have men administer justice who are unlearned in the law, and they ought to be abolished. I would not even retain them in those counties where a president judge does not live. Why? The only case that I have heard suggested in which they might be useful is when, perchance, an execution might be issued or a judgment obtained, and a motion was necessary to be made to a judge, and the president judge might be at a distance; but the Legislature can confide that power to the prothonotary, who may be just as competent to decide those questions as an associate judge unlearned in the law, and in nine time out of ten more competent.

MR. CORBETT. Better.

MR. DARLINGTON. Better by far, I should say. I can imagine, therefore, no propriety whatever in retaining an unlearned associate judge upon the bench under any circumstance.

We must remember that we are circumstanced very differently from what we were at the foundation of the government. When this government was organized, the judges of the Supreme Court alone came out and tried issues over all the counties

in the present eastern part of the State. There was a use then for associate judges to do orphans' court business in the way it was organized, and they held the courts at the houses where they lived, in different parts of the county, for the convenience of suitors. I can show you records in Chester county where the orphans' court has been held at the house of such a judge and again at the house of another judge, two of them being got together to transact the business for the convenience of the people; but this is no longer necessary; we have got away beyond that; we have advanced beyond that early stage of the law and of civilization. We do not need so many men to administer justice. I hope we never shall need associate judges to over-rule president judges. I can give you an instance of a citizen of Chester county who had a cause tried in one of the central counties of the State—I do not know whether the one represented by my friend from Mifflin (Mr. Andrew Read) or not—but the law was with him, the judge was with him in the recovery of his mortgage, but the jury were against him and gave a verdict against him. What next? He applied to the court to give him a new trial; the associate judges said "no," and there was no appeal. There was the use they were of to prevent a man recovering his debt in a particular case. That is about the strongest case I have ever known of their use; and that occurred, I think, in Mifflin county some years ago.

Who wants justice administered in his own county in that way? If the jury obey the law as laid down by the presiding officer of the court and it is wrong, you have a chance to revise the decision of the court by writ of error; but if you are denied a decision in accordance with the law as laid down by the court and refused a new trial, where are you? Injustice has been done and there is no redress for it; and this is one of the beauties of the associate judges undertaking to over-rule the president. Who wants to see that any longer in force? I would abolish them altogether. I would not retain them in a single county, because they are a useless appendage to the court.

Now, if gentlemen here can suggest any possible plan whereby justice shall be brought as nearly home as practicable to every man's door, and not at too heavy an expense to the Commonwealth, I am ready to go for it. If your judicial districts are too large, let that matter be

remedied. But is not that within the power of the Legislature? It certainly is. Will they not obey the will of the people when it is asked of them? If they will not, let us make it imperative on them to do it. That is all we can do. We cannot organize judicial districts. Why? Because the change of population and of business in the counties will show in a year or two or in ten years that that organization is improper. What we suppose to be a proper judicial force for a county may turn out to be too great, or it may turn out to be too little. We must apply a plastic remedy. Let the Legislature, who will be in session every year I trust, apply the remedy and form districts such as will satisfy the convenience of the suitors. Is there any difficulty about it? I do not see any, I do not know of any. If you should adopt the plan which is now proposed by some gentlemen to organize judicial districts in every county, then you may make that useful to some extent by casting upon the judge of the county the duty of probate judge, in short all the duties of the office of register and clerk of the orphans' court, with the assistance of a clerk; and in that respect you would come very near to the New York system, where in all counties not exceeding forty thousand in population they make the county judge the surrogate, and he does the double duty of trying all the causes, deciding all the causes, and also acting as surrogate or probate judge.

**THE CHAIRMAN.** The Chair is compelled to remind the delegate from Chester that his time has expired.

**MR. DARLINGTON.** I am glad of it. I am through.

**MR. C. A. BLACK.** Mr. Chairman: I shall not detain the committee more than five minutes. There are two points that there is no use in saying a single word about. The first is that it would be a great thing for a small county, with the number of people proposed by my friend from Allegheny (Mr. S. A. Purviance) to have a judge. We are all agreed that it would be a very great advantage to the bar and the people to have a single judge in every county where we have a population of 25,000. It is equally manifest to every delegate that in all the counties the associate judges may be abolished except in districts composed of more than a single county; wherever we have a law judge in a county there is no material use for the associate judges. If

that fact was not quite evident the gentleman from Chester (Mr. Darlington) has proved it to our satisfaction. Then it becomes a question only of dollars and cents to the Commonwealth, and that is under this provision the only point in it. It can be demonstrated beyond a shadow of doubt, unless I am greatly mistaken, that this proposition of the gentleman from Allegheny would be an actual saving to the Commonwealth by abolishing the associate judges in single counties. I was surprised myself at the result, but unless I am grossly mistaken in my calculation that is the result on the basis of 25,000 as proposed by him as the population entitling a county to a law judge.

I arrive at this conclusion in this way: We have now thirty common pleas judges in the Commonwealth; we have fifteen associate law judges; and we have seven district judges, five in Philadelphia and two in Pittsburgh. That makes fifty-two law judges in the Commonwealth. The proposition of the gentleman from Allegheny would involve an increase of ten law judges in this way. There are forty-two single counties with a population of twenty-five thousand, and over, each, the number proposed by him, and then taking the same number of associate and district judges we have now, associates fifteen, and five in Philadelphia and two in Allegheny, leaving them as they are, there will be sixty-two law judges in the State. That would involve an increase of ten law judges in the entire State. Put them at the same average salary they now get, and that would be unfair because I take it the Legislature will fix smaller salaries in small counties where there is not much business; but putting it at the sum now paid, the increase of ten would involve an additional expense of \$40,000. On that side of the account then we lose \$40,000.

Now there are sixty-four counties omitting Luzerne—and I am not sure whether they have associates there or not—but say there are sixty-four counties that have associate judges, that would be one hundred and twenty-eight associate judges. At \$500 a year, which I believe is their salary now without mileage, the aggregate amount is \$64,000 for the associate judges. Now you would retain them in districts, not single counties, say in twenty counties, which would be forty associate judges. That would be \$20,000. There then would be \$44,000 of a gain by abolishing the office of associate judges.

You would lose \$40,000 by the ten additional law judges, and there would be an actual gain of \$4,000 to the treasury. If I am mistaken in this, I beg to be corrected, but I am very sure that I am not.

It is then a pure question of dollars and cents to the Commonwealth, under the minimum proposed because we all agree that associates may be abolished with great advantage to the people, and especially to the bar, if we have a judge to each county of twenty-five thousand. Under this plan we can, if I am correct, and I am very confident I am right in my calculation, taking sixty-four counties with associate judges, and leaving Luzerne out of that calculation, because I am not sure whether that county has such associates or not, secure an actual gain of \$3,000 or \$4,000 by adopting the amendment of the gentleman from Allegheny, giving each county with a population of 25,000 a law judge and abolishing the associates wherever we have a law judge in a county.

If this be correct, and I think I am, and conceding that it would be of great advantage to the bar and to the people to have a law judge in each county of the proper population, and that the associates are of no great advantage to a county of that kind, I think the committee of the whole ought to adopt the amendment. It follows, I think, as a matter of course, that it would be not only a saving to the people but a great convenience to the people and the bar. I am, therefore, in favor of the amendment, as proposed by the delegate from Allegheny, (Mr. Purviance,) not because I have changed my mind as to the true principle upon which judicial districts should be established. My opinion was already formed in regard to that. I will support the proposition to provide a law judge for each county of twenty-five thousand population and abolish the associate judges, as proposed, mainly on the ground that it will give my county, Greene, a law judge. I grant it to be a somewhat selfish view, and in violation of certain preconceived opinions; but as we are somewhat at sea just now, I am willing, in committee of the whole at least, to support the amendment. But upon the same selfish principle, I would oppose it if it proposed a larger number, as it would leave my county out in the cold. I shall, therefore, vote for it, reserving to myself the right to oppose it on second reading, should a larger number be adopted by the committee, or should a

plan be proposed which is based upon a more correct principle.

The CHAIRMAN. The question is on the amendment of the delegate from Westmorland (Mr. Fulton.)

The amendment was rejected.

The CHAIRMAN. The question is upon the amendment of the gentleman from Allegheny (Mr. S. A. Purviance.)

Mr. WHERRY. Mr. Chairman: I renew my amendment to strike out of this amendment the last paragraph.

The CHAIRMAN. The paragraph proposed to be stricken out will be read.

The CLERK read the paragraph as follows:

"The office of associate judge, not learned in the law, is abolished, excepting in counties not forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

Mr. STEWART. Mr. Chairman: Do I understand the motion to be to strike that out?

The CHAIRMAN. The motion is to strike it out.

Mr. DARLINGTON. I ask the gentleman from Cumberland to divide that proposition. He proposes to strike out of the amendment that which abolishes the office of associate judge, unlearned in the law. He must leave that out, or else we shall be compelled to vote against it.

Mr. STEWART. That is just what the gentleman from Cumberland wants.

Mr. DARLINGTON. Certainly not.

The amendment of Mr. Wherry was rejected.

The CHAIRMAN. The question is upon the amendment of the gentleman from Allegheny (Mr. S. A. Purviance.)

Mr. NEWLIN. Let it be read.

The CLERK read as follows: Strike out the section and insert:

"Each county containing—inhabitants shall constitute a separate judicial district and shall elect one judge learned in the law, and the Legislature shall provide for additional judges as the business of said district may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or if necessary may be attached to contiguous districts as the Legislature may provide. The office of associate judge not learned in the law is abolished, excepting in counties not forming separate districts, but the several associate judges in office when this Constitution



shall be adopted shall serve for their unexpired terms."

Mr. DARLINGTON. I move to amend by striking out all after the word "abolished."

The CHAIRMAN. The words proposed to be stricken out will be read.

The CLERK read as follows:

"Excepting in counties not forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

Mr. BARTHOLOMEW. I would like to suggest to the delegate from Chester to allow that part of the proposed amendment of the gentleman from Allegheny to stand which provides that judges now in commission as associate judges to remain until their commissions expire.

Mr. DARLINGTON. What for? I want to vote simply on this question—shall we abolish associate judges?

The amendment of Mr. Darlington was rejected.

Mr. LILLY. I suppose the next thing is to fill the blank.

The CHAIRMAN. The question is upon the amendment.

Mr. BUCKALEW. I desire to ask the author of this amendment a question. I observe that he makes no provision for existing commissions in all our judicial districts in this State. I want to know what provision he intends to make on that point?

Mr. S. A. PURVIANCE. That will be provided for in the schedule.

Mr. BUCKALEW. It is no answer to my question to throw the word "schedule" at me. I want to know what particular arrangement he proposes with regard to judges whose commissions have yet to expire. Are they all to go out of office at once? We cannot retain them under the re-arrangement of the districts of the State. It is utterly impossible.

Mr. S. A. PURVIANCE. I will try to answer the gentleman more definitely. It was distinctly stated by the chairman of the Committee on the Judiciary (Mr. Armstrong) before he left, that he desired the schedule when it was reached postponed in order that this whole subject could be referred to the Committee on Schedule for general determination. It is the unanimous desire of the Committee on the Judiciary that no change be made in the commission of any associate judge now in office, but that they all be allowed to serve out their full terms.

Mr. BUCKALEW. I do not like at this time to protract debate; I only want to understand this subject. Take the case of Bradford and Susquehanna counties, for instance, which form a judicial district. There are two judges residing in Bradford. If you make that county a district, of course one judge must go out. Which are you going to turn out? Take the case of the Tioga district, in which two or three counties are connected. Both judges are residents of Tioga. One man was elected last fall to hold his office for ten years; and is he to go out under the provisions of this section? Certainly, when gentlemen propose a scheme which cannot work for eight or ten years to come, they must give us some explanation about what they propose to do in the meantime.

Mr. S. A. PURVIANCE. Why is not that a proper subject for disposition by the Committee on Schedule?

Mr. BUCKALEW. I know that it is proper matter for disposition by the Committee on Schedule; but I want to know, before we adopt this amendment, what the Committee on Schedule must do. If they are to abolish part of these gentlemen, we should make a general provision over the State.

Mr. S. A. PURVIANCE. I will further answer the gentleman from Columbia that it was the unanimous voice of the Judiciary Committee that all the judges of the Commonwealth, as well those learned in the law as those unlearned, should remain in office until the expiration of their commissions.

Mr. BUCKALEW. I want to suggest this to the gentleman: We have now two judges residing in the county of Tioga. Under this you make a new district of Potter, M'Kean and Cameron, leaving out Tioga, and you put a new judge in them. You have two judges already in Tioga; and do you turn one of them out of office? That is simply one illustration. Now, the gentleman over the way tells me that by another provision all the present judges are to serve out their terms.

Mr. S. A. PURVIANCE. It is certainly within the power of this Convention in the schedule to make an arrangement to provide for these difficulties.

Mr. MANN. Mr. Chairman: I hope this Convention will not mar the Constitution of the State because of the difficulties which the gentleman from Columbia suggests. It is the business of the Committee on the Schedule to bridge over all those difficulties, and they will do it of

course; they must do it. This proposition is one that the State needs. It meets all the difficulties that have been presented except just that one of what is to be done with the judges now in office. That certainly can be provided for without endangering a proposition of such value as this.

The CHAIRMAN. Is it the desire of the House to fill the blank now? ("No." "No.") The question is on the amendment of the delegate from Allegheny (Mr. S. A. Purviance) as a substitute for the section.

The amendment was agreed to, there being on a division, ayes fifty-nine, noes eleven.

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

Mr. BOWMAN. I move now to fill the blank by inserting "thirty thousand."

Mr. ANDREW REED. I move to amend, by inserting "fifty thousand."

The CHAIRMAN. The question will be taken on the largest number first. The question is on the motion of the delegate from Mifflin to insert "fifty thousand."

The motion was not agreed to.

Mr. LANDIS. I move to amend, by inserting "thirty-five thousand."

The CHAIRMAN. The question is on inserting "thirty-five thousand."

Mr. CRAIG. I rise to a point of order. I understand the rule to be that when a blank is to be filled the motion is to be taken on the highest number named, and that as many numbers as the members see proper may be named.

The CHAIRMAN. That is correct; but the amendment has already passed with a blank in it. The proposition is to amend the amendment by inserting a certain number. It is not like an ordinary case of filling a blank before the vote is taken.

Mr. LANDIS. I will modify my motion and make it "40,000."

The CHAIRMAN. The delegate from Blair moves to insert "40,000."

Mr. S. A. PURVIANCE. I ask the attention of the committee for a moment. I oppose the insertion of any number greater than "25,000." In the first place, I submit to gentlemen of the Convention that we are making a Constitution that is not merely for the present day, but it is to last possibly for fifty years. Whilst we name population as the basis to be fixed on which this principle is to go into operation, we must look beyond it. Take, for instance, the county of Clearfield. I was told by his Honor, Judge Mayer, who

presides over that district, that in that little county of Clearfield, which has not a population, possibly, of more than 25,000, they put down on a single trial list fifty ejectments. Now, sir, that is a lumber county, a great manufacturing county; that is a county in which there are interests of millions of dollars owned by persons not resident in the county, but beyond it. And there is the county of Lawrence, in the same way, a great manufacturing county, falling, perhaps, a little below 30,000. There is the county of Clarion, now becoming a populous county, growing every day; an oil region. It strikes me that a population of 25,000 and a growing population are fairly and justly entitled to a county court. As I mentioned this morning, the State of Illinois gives every county, without regard to population, a court. Therefore, I hope 25,000 will be inserted.

The CHAIRMAN. The question is on the motion of the delegate from Blair to fill the blank with "40,000."

The motion was not agreed to, there being, on a division: Ayes, twenty-five; not a majority of a quorum.

Mr. LANDIS. I now move to insert thirty-five thousand.

Mr. BOWMAN. Just one word right here. I went for the measure of the gentleman from Allegheny as honestly and conscientiously as I know how to discharge any duty on this floor. Now, if this is to be put up to thirty-five thousand, I am standing here and occupying the position of throwing entirely out one of the counties which I in part represent on this floor, and it is a fraud upon myself, and I shall undertake to back out of everything I have said and done. I think it will be decidedly wrong. I took it for granted that the maximum would be fixed at thirty thousand.

As I undertook to explain this forenoon, we have eighteen counties containing less than twenty-five thousand, and we have nine counties containing less than thirty thousand, but above twenty-five thousand. Those containing a less population than thirty thousand; in a very few years will have a population that will entitle them to a separate judicial district under this provision. So I think thirty thousand is about the figure that we ought to fix at the present time.

Mr. NILES. If you put it at thirty thousand, thirty-nine counties in the State will have the benefit of this provision; if you put it at thirty-five thousand only

twenty-nine. If we are to do anything for the counties in the shape of county courts it seems to me that thirty thousand is a large enough limitation. This thing is not positively regulated by the number of population, because many counties in the State of less population have a greater amount of legal business than others with a larger population. I think it is fair to put it at thirty thousand.

Mr. S. A. PURVIANCE. I am perfectly satisfied to make it thirty thousand.

The CHAIRMAN. The question is on the motion of the delegate from Blair to insert thirty-five thousand.

The motion was rejected.

Mr. S. A. PURVIANCE. I move to insert thirty thousand.

Mr. MANN. I move to make it twenty-five thousand.

The CHAIRMAN. Thirty thousand has been named, and also twenty-five thousand. The question will be taken on the largest number first. The question is on the motion to fill the blank with thirty thousand.

The motion was agreed to.

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

Mr. BUCKALEW. Do I understand that the blank is filled?

The CHAIRMAN. It is filled with thirty thousand.

Mr. BUCKALEW. The gentleman from Allegheny referred to the county of Clearfield with twenty-five thousand inhabitants according to the census. There is employment enough in that county for a judge. My own county, Columbia, has reported a population of twenty-eight thousand seven hundred and sixty-six, three thousand more. The judge of our county, in addition to attending to our business in Columbia county, holds courts in two other counties, Wyoming, which gives more business than Columbia although a smaller population, and the county of Sullivan. He attends to all the judicial business of the three counties, and one-third of his time holds courts outside his district in the adjoining counties of Schuylkill, Northumberland and Luzerne.

The lesson taught by the comparison of these two counties, Clearfield and Columbia, is this, that there is no such thing as basing judicial service upon the population of the different counties of the State, and that it is impossible to make districts that will be equal and impose equal labor on the judges throughout the Common-

wealth; and that this scheme means that you must have thirty to fifty per cent. more law judges to do our work in this State, because you must bring your assignment of judicial service up to the requirements of the places in the State where there is most litigation. Therefore you will have thirty or forty per cent. more judges in number than you need have.

Without going into general debate on this one point, I shall vote against this proposition. No power can make this thing right, except the Legislature, with all the practical facts before them, with a knowledge of the peculiar circumstances in each county which they propose to deal with. We have not that information here. We have not examined into it, and although this proposition will fit very well in particular places for particular counties, and therefore meet the views of gentlemen from those particular counties, yet as a general arrangement, in my judgment, it is not fair.

Mr. WHERRY. Mr. Chairman: I desire simply to say, in confirmation of what the gentleman from Columbia has said, that the county in which I live belongs to a judicial district containing within a very small fraction of one hundred thousand of a population. It has been administered over by one judge since the Constitution of 1837-8, and that judge is not occupied more than one-half of his time. Now, I ask, in the name of common sense, what is the use of establishing what will be equivalent to three such courts in that judicial district.

Mr. CURTIN. Mr. Chairman: I live in the district composed of the counties of Clinton, Centre and Clearfield, and I allege in the presence of this Convention that the judge of that district is not employed one-half of his time. We have a population of thirty-four thousand and a fraction in Centre county, and eight weeks in the year are quite enough to discharge all the duties of the judicial office in Centre county. I ask the members of this Convention to pause before they make a regulation in reference to the judicial districts of the State which is exclusively within the power and province of the Legislature.

Mr. ANDREW REED. The judicial district in which I live is composed of the counties of Mifflin, Union and Snyder. The aggregate population is nearly fifty thousand. It is presided over by one judge, and not the one-third of his

time is taken up at present. I am opposed to fastening this system on the State creating such an unnecessary quantity of judges.

Mr. CRAIG. As the gentlemen are explaining the situation of things in their districts, I wish to have one matter explained. The prothonotaries of twenty-seven counties have reported to this Convention the number of cases pending and undetermined in their counties, and they report in those twenty-seven counties nearly eighteen thousand cases pending and undetermined. I ask the gentlemen to explain that matter consistently with the statements they make.

Mr. KAINE. Mr. Chairman: The cases referred to by the gentleman from Columbia and the gentleman from Centre ought not to be taken by this Convention as any criterion for the rest of the State.

Mr. CORBETT. Will the delegate allow himself to be interrupted? I know of a case in Clearfield county that has been pending now for over a year and a half on a motion for a new trial, which motion is yet undecided.

Mr. KAINE. The gentleman gives me information that he knows of a case in Clearfield county where a motion for a new trial has been pending for a year and a half and is yet undisposed of.

In the district from which the delegate from Columbia comes, they have, I understand, one of the very best judges in the whole of this broad Commonwealth. Other parts of the State are not so well blessed as his; and I am of the opinion perhaps that the gentleman from Columbia has not been engaged for a number of years in very active practice at the bar as some other members of this Convention have, and he does not know the troubles and difficulties that members of the bar have in that regard. He has been engaged in public life for the last twenty-five years. So has the gentleman from Centre. I judge that the gentleman from Centre has not tried a cause in court for the last fifteen years. Therefore they know nothing about the workings of the courts. Besides, I understand that the judge in the district from which the gentleman from Centre comes is an admirable judge also, one of the very best in the State. But other parts of the State are not so fortunate in that regard.

The gentleman who sits before me (Mr. Andrew Reed) says he is in a district of fifty thousand people and they have a judge who does all the work well. I am

in a district in which we have, seventy or eighty thousand, and I know that both the counties in that district are very much behind. I know the same to be the case in a great many other counties of this Commonwealth, and in a Convention containing one hundred lawyers, their opinion upon a subject of this kind ought to have some weight with the other members of the Convention. If there has been any complaint that we have heard more about since the meeting of this Convention than any other, it has been that the judiciary was not sufficient, that we wanted more judicial force. Why, sir, we have spent a month or more on that subject now. First, a circuit court was the remedy. Then a different organization of the courts of common pleas was the remedy; and that met the approbation of the gentleman from Columbia, but did not meet the approbation of the members of this Convention. Now, if we can adopt this system, although in my opinion it is not the best, it will answer the purpose as well as anything else. I hope the section will be adopted.

Mr. BOYD. In the absence of the chairman of the Committee on the Judiciary, I propose to take it upon myself to represent him in this particular matter, and will state here that the Judiciary Committee encountered very much the same difficulties that the committee of the whole now meet on this subject; that is to say, there was a variety of opinions expressed by the different members of the committee as well as by those who were before the committee; but I tell gentlemen that the overwhelming weight of testimony on this subject before the Judiciary Committee was in favor of this very proposition. Whilst there are counties and judicial districts in this State where the business is not sufficient to keep the judge actively employed, yet they are comparatively few and at present quite unimportant when you measure them by the districts where the judicial force is inadequate and deficient.

I believe, from the statements made before the Judiciary Committee, that the amount of business in the numerous counties which have developed oil within the past few years, and which is behind to an enormous extent, is of itself sufficient to warrant this Convention in adding the judicial force as proposed by the pending proposition, even if a few of the more unimportant and yet comparatively undeveloped counties are not up to the

measure of requiring more judicial force. The Committee on the Judiciary found it utterly impossible to so arrange every county and every judicial district as to satisfy everybody, and this committee will find it just as impossible if they undertake to harmonize them to the satisfaction of all.

In my opinion there can be no reasonable doubt on the subject. The weight of the arguments that have been adduced by the gentlemen who have spoken on this question clearly indicates our plain duty in regard to it. It may very well be that in the county of Centre there are not enough cases for one judge to try; but I respectfully suggest that that judge can make himself useful in the discharge of other duties which I undertake to say he does not perform at this time. Let him attend to the examination and auditing of accounts. Let him transact that kind of business, and if he has not work enough to do then, it will be a very strange thing.

One word, sir, in reference to the remarks of the distinguished delegate from Columbia (Mr. Buckalew.) Every man in this Convention knows that applications have been made time and time again to the Legislature to supply the increased judicial force required throughout the State, and the Legislature have almost uniformly refused to make separate judicial districts. They have tided over the difficulty from time to time by furnishing additional law judges, thus making a sort of double-headed court, which has been found to work badly throughout the State; but they have not even given an additional law judge until the necessity for some relief was so strong and so apparent that it could not be resisted.

I think this system of having a separate judicial district in every county of twenty-five or thirty thousand inhabitants will be found to answer a capital purpose. I hope the Convention will adopt the measure as it is now proposed, and that there will be no going backward.

Mr. BIGLER. Mr. Chairman: I have listened with the utmost diligence and with great anxiety to the debate on this subject, for it is one of those questions upon which I do not profess to be prepared to act myself. I am not a practising lawyer; and more than that, I have never had any lawsuits. I, therefore, am not at all familiar with the state of business in the courts. I may say, however, that during my late visit home, one of the

things that was prominently brought before me was the necessity for some relief on this subject because the business of the courts is very much behind; and I can say, and in that I shall be sustained by all who know him, that our judge is one of the most efficient in the State.

Now, in reply to my friend from Centre, I would remark that there was a time when he knew our county very well; but the legal business there is unhappily (I hope the lawyers here will pardon me that expression) increasing very rapidly, and because of a large mining interest the criminal business interferes with the courts. We are engaged there now in mining coal to the extent of, I think, about two thousand tons a day, and the business of manufacturing fire brick is coming up throughout that county. That, with our heavy lumber business, and disputes in real estate about the wild lands because of their increased value, make the legal business a very heavy one in that county.

Now, sir, listening to this discussion as far as I could with great diligence and anxiety to arrive at a correct conclusion, I have not been very decided. At times I have shifted, in my judgment, from one side to the other as the debate has progressed, but I have concluded to vote for this proposition as it stands before us. I do not say that with greater light before we pass upon it finally, I might not change that judgment; but my desire is that what I might do shall be to increase the means of disposing of the judicial business of the State.

Mr. LANDIS. I presume, Mr. Chairman, the proper way to ascertain what the requirements of the people of the State are would be to look at the condition of one's own district. The district in which I reside is composed of the counties of Blair, Huntingdon and Cambria, comprising a population of about one hundred and ten thousand. We have scattered through that district large mining interests, large manufacturing interests, and a large lumber business. We have also in the district two cities, Johnstown and Altoona, containing a population of from twelve thousand to fifteen thousand each. We have also a large agricultural population. We have a large legal business in that district. On the trial list of my own county to every term we have from sixty to eighty causes, a majority of which are disposed of at every term. The balance of the business of the district, I believe, is about equal to the business of my own

county. Now, sir, in each of those counties we have a two weeks' term of court four times a year, and yet the time of the judge is not occupied to a greater extent than about one-half or a little more than one-half. So that I arrive at the conclusion that a population of about one hundred thousand with diversified interests gives about a fair employment to a diligent judge; and I believe there is no more diligent judge in the State of Pennsylvania than the gentleman who is now occupying that position in my district.

There is another objection, it appears to me, in cutting down the districts in the matter of population. You do not give enough occupation to make a good judge, and the result will be that in course of time you may have indifferent judges upon the bench. Therefore, I would prefer to give an increased population, so that the judge may have occupation, that he may have more enlarged experience, and so that also you will not be exposed to the danger of having the salaries of the judges cut down and thus obtain cheap judges. I think, therefore, the better plan by far would be to keep up the ratio of population for a district so as to keep your judge fairly employed, in order that you may have a good one, and also that his salary may not be reduced.

Mr. FULTON. I desire to say but a few words on the section as it now stands.

We have been told almost every week during the sessions of this Convention that the city of Philadelphia required more government according to its population than any other section of the State, and that the city of Pittsburg came next. It is certainly a fact that there is double the amount of litigation in these two great cities according to the population than there is in the rural districts of the State. Now, when we come to examine, we find that in this city they have one judge to every 67,000 population; in the city of Pittsburg one judge to every 68,000, and a little over. I ask the delegates here from the city, if they feel that it is their duty, if they feel that they can go home to their constituents and say that they have not made an extravagant expenditure of the funds of the Commonwealth by sending judges all over the State into these rural and agricultural districts, where there is comparatively little litigation, to every 30,000 of population.

We are told that this is to furnish a judge to every county in the Commonwealth. When we come to test it, we find that with

a ratio of 80,000, there are twenty-three counties in the Commonwealth still left without judges. So they are not provided for. On the other hand, we find fifteen counties that have over 50,000 population, with far more litigation, owing to the varied employments of the people, and there in a few years the judges will be overworked. We are pensioning about twenty judges in about that many counties, where they will not have work one-fourth of their time, and leaving fifteen counties that will not be accommodated by the provisions of this section, on account of their being too far above in population, and too much business for one judge, and twenty-three counties that are too low in population to be reached.

I simply desire to call the attention of the committee to the fact that this section does not meet the wants of the people at this present time, and it ought to be voted down, and we ought to find something else that will meet the case.

Mr. BEEBE. I shall detain the committee but a moment.

The argument on the part of the gentlemen opposed to this measure seems to be that the judges will not have all the work they can do. I ask, what of it? Do the prothonotaries of all the counties have all they can do, or are their services all alike? Do the registers? What are these men for, and why are they established at the county seats of the different counties? It is for the accommodation of the people. It is that the people may have justice, and have it speedily, and have it in accordance with the principles of the Constitution. Now, if we are to have no associate judges—they are already wiped out—and a community of thirty thousand people in a certain number of square miles require a judge, because there is not enough business to occupy all his time, forsooth, is that any reason why those people should be deprived of their judicial rights? It strikes me it is not a fair criterion of judgment at all. These counties of twenty-five thousand or thirty thousand inhabitants have those rights under the principles of government and by virtue of the Constitution as well as larger counties, and that they are practically deprived of them has been illustrated by various gentlemen on this floor in repeated instances in regard to their local applications for new trials, or for stay of writs, or for injunctions in many cases, and the like.

Mr. LAWRENCE. Mr. Chairman: I have listened attentively to this discussion from day to day in reference to these several courts, but have taken no part in it. The proposition now before us seems to affect the people in my own district and in every district in the State so directly that I feel it my duty to say a word upon it.

I do not know what the opinion of the bar or of the people of my district would be on this question; but I was very much struck with the position taken by the gentleman from Columbia, (Mr. Buckalew,) when he said that this whole question ought to be referred to the Legislature, who could best ascertain what was wanted and provide districts adapted to the wants and business of the people.

But, sir, I rose to say a word in reference to my own district. In that district, composed, as you all know, of Washington and Beaver, we have one of the purest and best judges in the State. He is not employed more than one-half of his time, and I have never heard him or any body there claim that the business was not kept up. And yet when I reflect that the proposition, as I understand it, now is to abolish the register's court, and to allow the judge to attend to the business of the register, the auditing of accounts, &c., I am almost disposed to believe that I ought to vote for this proposition, looking at the character of my own county with a population of almost fifty thousand; but I hesitate. I hesitate only because I believe it will add to the general expenses of the State. It will add, as my friend from Columbia says, at least forty-five or fifty per cent. to the expenses of the judicial system of the State. It must do so. A friend near me says \$330,000 will be the whole. I do not know who has made that calculation, and I do not know how an accurate calculation can be made because you cannot tell how the districts will be formed; but every sensible man on this floor will admit that it will largely increase the expense of the local district judges, certainly one-third in the State. No man can deny that.

Mr. S. A. PURVIANCE. I ask the gentleman from Washington if he heard the gentleman from Greene, (Mr. C. A. Black,) who gave an estimate of the expenses under this plan, and the amount saved by the abolition of the associate judges and declared to us that that brought out a sav-

ing to the State by the adoption of this plan?

Mr. LAWRENCE. I do not know to whom the gentleman refers. I know that figures generally do not lie, and I do not see how any gentleman can figure up such a proposition as that. My friend here (Mr. Wherry) says he has made a calculation, and I should like to hear it.

Mr. WHERRY. Outside of Philadelphia and Allegheny there are now thirty-seven law judges in the State. This proportion will give thirty-nine judges in the separate counties, and there are then twenty-seven counties to provide for.

Mr. BOYD. Will the gentleman from Washington allow me to ask the gentleman from Cumberland a question?

Mr. LAWRENCE. Certainly; I want to get information.

Mr. BOYD. Where two counties, as Montgomery and Bucks, have a president judge, and also an associate law judge, does he mean to say that counting that class of judges in, it makes that difference.

Mr. WHERRY. Yes, sir.

Mr. BOYD. I think the gentleman is mistaken.

Mr. LAWRENCE. These different estimates only prove that no man here has as yet figured this matter out correctly.

Mr. KAINÉ. I desire to correct the gentleman. From some information given to him just now, he stated that this proposition would increase the judicial expenses of the State \$330,000. I hold in my hand—

Mr. LAWRENCE. The gentleman does not understand me as saying that. My colleague (Mr. Hazzard) or somebody behind me said that.

Mr. KAINÉ. It has been stated as a fact. Now I will read from the appropriation bill—

Mr. LAWRENCE. If my time is extended, I am willing to give way.

The CHAIRMAN. The gentleman from Washington desires to occupy his whole time.

Mr. KAINÉ. The total cost was only \$130,000 for all the common pleas courts of the Commonwealth.

Mr. LAWRENCE. I repeat again that I did not make any such statement. The statement was made by somebody near me that it would add largely to the expense. I want to know if there is any man on this floor who does not know it will add to the expense. Every man will admit that it will add to the expense;

and yet I do not say that it is not right. That is a question which I am willing to hear argued. If it does add to the expense it may be an advantage to the people and ought to pass. I do not put it on that ground, but I say that every man on this floor must admit that it will add to the judicial expenses of the State.

Now the question is, will it be a benefit, is it necessary? and I only judge from my own district. I ought not, perhaps, to judge my district by other districts in the State, because we have but little litigation, we have in our county not many public improvements; we have a peaceful population, but little dissipation, but few criminal trials; hardly anybody is sued, few judgments are entered up, and the sheriff has little to do. The sheriff of our county told me himself he could not live on the salary.

Mr. BOYD. Can any man live in Washington county? [Laughter.]

The CHAIRMAN. Does the delegate from Washington permit himself to be interrupted?

Mr. LAWRENCE. I will permit my friend over the way to interrogate me, because I know we shall get something funny. [Laughter.]

The CHAIRMAN. Does the gentleman from Montgomery desire to interrogate the gentleman from Washington?

Mr. BOYD. Not now.

Mr. LAWRENCE. I mention this as I think it a credit to our people that we have but little litigation, and hence my own district ought not, probably, to be a criterion. Judge Achison I think performs all the duties required of him in the two counties in one-third of a year, and I say again I have heard no complaint; and yet when I reflect that you take away the registers' court, that you take away the miserable habit in the courts of the State of auditing accounts at large expense, putting estates to expense, and provide instead for settling up the accounts by the courts, I am almost induced to vote for it. I wish I knew the wishes of the bar and the people at home. I can see much force in the proposition made by the gentleman from Allegheny; and if it were not for this item of expense I should be very willing to see it passed and tried. But it is a radical change in this State to propose to put one judge over every thirty thousand population in the State, and perhaps it is not the proper basis to put it upon as has been indicated. I would rather, I believe, vote to leave it to the

Legislature to district the State in that way.

I have felt it my duty to say this much without indicating any particular opinion on the amendment, for I have none.

Mr. MACCONNELL. I rise merely to correct the cyphering of my friend from Westmoreland in regard to Allegheny county. We have a population of two hundred and sixty-two thousand. Heretofore we have had five judges, which gave us a judge for every fifty-two thousand. The last session of the Legislature gave us an additional judge, making six, which gives us a judge for every forty-three thousand. You now propose to give us in addition two judges of the orphans' court, which would be eight, and that would give us a judge for every thirty-two thousand, bringing us on an equality with the other districts.

Mr. J. N. PURVIANCE. I merely wish to give the expenses from the report of the Auditor General. The expenses of the judiciary of the State amount to \$323,000. According to the amount stated by the gentleman from Washington, \$320,000 for the present system, it would be a saving of \$3,000.

Mr. LAWRENCE. I hope nobody will get it on the record that I said any such thing, for I did not say any such thing.

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

The section as amended was agreed to, there being on a division, ayes forty-eight, noes seventeen.

Mr. CURTIN. That is not a quorum. Sixty-five is not a quorum.

The CHAIRMAN. Does the delegate raise the question of a quorum not being present?

Mr. CURTIN. A quorum has not voted on that. I raise that question certainly.

The CHAIRMAN. That is not necessary. The Chair decides that a majority of the votes cast, if there is a quorum present or the question of the presence of a quorum is not raised, is sufficient. The Chair would remark that there are over eighty members present, by count a few minutes ago.

The next section will be read.

The CLERK read section twenty-seven as follows:

SECTION 27. 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 ef-



fect of the process, judgment and decisions of such courts shall be uniform.

Mr. KANE. I think that section ought to be voted down. It relates to a matter which appropriately belongs to legislation. I think we have already sufficiently provided for matters of that kind in this article.

Mr. BOYD. If that is so it is a very easy matter for the Committee on Revision to compare them and see if they are alike, and arrange the matter properly. I do not think the report of the committee should be voted down because a gentleman chooses to stand up here and say it is provided for somewhere else. If it is so the Committee on Revision can regulate that; if it is not so, we run a risk by having it voted out. I therefore trust the section will be sustained as it is. It will do no harm.

Mr. KANE. There is no use in passing the same thing twice.

The CHAIRMAN. The question is on the section.

The section was agreed to, there being on a division, ayes thirty-seven, noes twelve.

The CHAIRMAN. The next section will be read.

The CLERK read section twenty-eight as follows:

SECTION 23. 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 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.

Mr. DARLINGTON. I do not see that that ought to be adopted. The practice of a court is more conveniently arranged by the judges of the court themselves than by the Supreme Court. That has been exemplified by the rules in equity practice adopted by the Supreme Court, and found very inconvenient in some districts throughout the State. I think it had better be left to the respective courts themselves to regulate their practice.

Mr. BOWMAN. Mr. Chairman: I do not propose to detain the committee long; but I think this section ought to be passed, and for reasons that I will very briefly state.

I happen to reside in the sixth judicial district. Our court has established certain rules; in the county of Crawford, the adjoining district, another rule prevails; in the county of Venango another rule. Each is a separate judicial district; and just as soon as a practising attorney from one district goes into another he does not know what the rules of the court are. For instance, he may commence a case in one court; under the rules of the court in the county where he resides he may be entitled to a judgment by filing his declaration and a copy of his claim; in another district a very different rule may prevail. In taking judgments a different rule prevails in different districts. While this may be, as suggested, a proper subject of legislation, I do not for the life of me see how the Legislature is going to pass any general law compelling the presiding judge of any particular district to establish certain uniform rules for the government of each court. I think that here is the place for it; let the Supreme Court establish the rules, and let every court of record in the State have the same uniform rules throughout the Commonwealth. As is suggested to me, we all know that the questions as to the rules of the particular courts in the State come before the Supreme court for decision. In one judicial district there is one rule; in another there is a very different rule; these things all have to be decided upon by the Supreme Court. They say that the rules that have been established by a certain court are the law of that court, though a different rule may prevail in another district. If we have uniformity in the practice of our courts, we shall save a great deal of time in the Supreme Court; we shall all know exactly the rule that prevails in Erie, the rule in Northampton, and the rule in Schuylkill. We shall all understand that just as well at home as though we had the rules of those particular courts before us. I hope this section will be adopted.

Mr. HAY. Mr. Chairman: The latter part of this section reads:

"That special rules may be provided for cities exceeding one hundred thousand inhabitants," &c.

I desire to ask some member of the committee who is informed on this sub-

ject, whether that clause means that one rule may be made applicable to the city of Pittsburg, which has a population exceeding one hundred thousand, and another rule for the rest of the county of Allegheny. Should not the word "cities" be changed to "counties" or "judicial districts," or some other proper descriptive term?

Mr. BOYD. I do not suppose the committee thought much about Pittsburg in this business; but I see no objection to amending that clause so as to read "judicial districts;" that special rules may be provided for judicial districts exceeding one hundred thousand. I think I will take the responsibility of accepting that amendment. [Laughter.]

The CHAIRMAN. The delegate from Montgomery cannot accept an amendment.

Mr. BOYD. I understood the gentleman from Allegheny to make a proposition to amend.

Mr. BROOMALL. I think the proposition of the gentleman from Pittsburg has weight in it, and I would suggest to him that he move to strike out, in the seventh and eighth lines, the words: "*Provided*, That special rules may be added thereto by the presiding judge in any judicial district with the consent and approval of the Supreme Court."

That will allow special rules in all cases where they ought to be allowed, and it will keep the Supreme Court advised of what special rules are adopted in particular districts. I make that motion.

Mr. BARTHOLOMEW. I move to amend, by striking out the whole proviso. I do not see any necessity for it.

Mr. HAY. And the rest of the section.

Mr. BARTHOLOMEW. Under the proviso I do not see why there should be any different rules established in the city of Pittsburg or Philadelphia from those in the counties of Northampton and Schuylkill. I think the practice should be uniform throughout the Commonwealth, and therefore I see no necessity for the proviso.

Mr. NILES. I can see very well why there ought to be a different rule in the city of Philadelphia from the country. In my county our return days are once in three months; here they have them every month or every week, perhaps. The same rule that would be applicable in a rural district in reference to the return day of writs, and taking of judgments,

might not be applicable to a great city like Philadelphia or Pittsburg.

Mr. BARTHOLOMEW. The time for taking the judgment after the return day would be just the same number of days precisely.

Mr. STEWART. I wish to call the attention of the gentleman from Schuylkill to the provision of the section. It does not simply provide that special rules may be provided for cities exceeding one hundred thousand population, but that special rules may be added by the presiding judge of any judicial district, and I hope the gentleman does not mean to include that in his motion to strike out. Does the gentleman mean to strike out the whole proviso?

Mr. BARTHOLOMEW. Certainly. I take it if that proviso remains in the section and the president judge of any judicial district has a right to suggest a special rule for his court, all uniformity is at once destroyed, because every judge throughout the Commonwealth will have his particular rule and hobby to suggest and incorporate in these rules of court, and then the uniformity which is proposed to be established by this section is at once destroyed. If there is to be uniformity, it must be by having one governing head, and we have vested that by this section in the Supreme Court, and let them make general and uniform rules which are to govern the courts in their practice throughout this Commonwealth.

Mr. STEWART. The practice of the different districts may be varied; and so long as we leave the right to supplement these rules subject to the approval of the Supreme Court, there cannot be any great want of harmony.

Mr. BARTHOLOMEW. But suppose there should arise a necessity for the establishment of a rule, upon the submission of the reasons for the establishment of the rule, why should it be confined to a particular district? Why not make that rule uniform?

Mr. STEWART. The necessity may exist locally.

Mr. BARTHOLOMEW. No; the necessity might arise locally, but yet it would be a uniform rule so that all could have the advantage of it. If one district requires a rule and it may have good in it, let it be a uniform rule.

Mr. STEWART. Why apply it where the necessity for it does not exist?

Mr. BARTHOLOMEW. But the difficulty is if you have the authority to establish

special rules for any particular court, then you destroy the uniformity of your system at once. It amounts to nothing, and you had better vote the section down.

Mr. WRIGHT. This matter was very fully considered by the Committee on the Judiciary. They desired to make the rules uniform throughout the country districts. It was suggested, however, that there were different rules applicable to large cities where the practice is entirely different from the practice in the country. For that reason we did not make it uniform as to all the courts. It was not intended to apply to the city of Philadelphia, nor probably the city of Pittsburg; but as to the country, it is important that we should have a system of practice that will apply to all the counties alike, as well for the convenience of practitioners of the law as for the convenience of the judges of the Supreme Court. There is no reason why it should not stand exactly as reported, that the Supreme Court may have authority to establish such a code of practice for the city as may be proper, and likewise for the country. Every lawyer knows that the practice is very different.

Mr. MACCONNELL. I am in favor of the amendment offered by the gentleman from Schuylkill (Mr. Bartholomew.) I live in Pittsburg and have practiced there a very long time, and I do not think that we need any special rules. We have a set of rules established by the Supreme Court to regulate chancery practices. They apply to every judicial district in the State. They are the same for Philadelphia as for Pittsburg, and for every other judicial district. We find no inconvenience from these uniform rules. They suit us just as well, and a great deal better than if they had made a separate set of rules for every judicial district. I think it is a matter of great importance that the uniformity of the system should be preserved and that we should all be required to practice under the same rules.

Now let me refer to an inconvenience in our own county. We have a district court and a court of common pleas. These two courts have each its own set of rules, and in many cases they conflict. In some cases they are almost the exact opposite of each other, and this variance has become a source of continual annoyance to the members of the bar. You have to go to your rule books and see which rule it is that applies to each court before you can do any thing; or you make a mistake by

supposing that the rule of one court is the rule of the other. I want to see uniformity not only in our district, but in all the districts of the State.

Mr. DARLINGTON. Mr. Chairman: I am utterly unable to understand why there should be uniformity in the rules of practice. Neither can I, for the life of me, conceive what the Supreme Court have to do with this matter. Their business is to interpret the rules of each separate court if called upon to do so, which is rarely, if ever, done. Why should not the citizens of one part of the State be allowed to prescribe their own rules of practice in the administration of justice?

Mr. BARTHOLOMEW. Will the gentleman from Chester allow me to interrupt him for one moment?

Mr. DARLINGTON. Yes, sir.

Mr. BARTHOLOMEW. Has not the Supreme Court of the State adopted a set of rules in equity practice for the Commonwealth?

Mr. DARLINGTON. I know it.

Mr. BARTHOLOMEW. And have they not worked well?

Mr. DARLINGTON. No, sir. I will say here briefly, for I do not intend to take up time in the discussion of the question, that they require that all proceedings in equity should be printed. This is entirely uncalled for and an unnecessary expense, and in our part of the State we do not obey it at all. By agreement, in nearly all equity cases before our court, at least in fully one-half of them, we do away with this unnecessary expense.

Again, the return days in Philadelphia are monthly, once a month.

Mr. DALLAS. Two, in September.

Mr. DARLINGTON. In Delaware county, instead of being the first Monday in the month, they are the last Monday of the month. In Chester county our return days are fixed at ten days after the writ is served on the defendant. That is when a man has to appear by our practice, because we have a special law applicable there, just as Philadelphia has a special law applicable here, and as Delaware county has a law applicable to it. Wherever there is a special law applicable to a particular locality, there, of course, the rules of practice must vary in conformity with it.

Mr. BROOMALL. Will my colleague allow me to ask him a question?

Mr. DARLINGTON. Oh, yes.

Mr. BROOMALL. Then I would like to ask the gentleman, whether he has not

himself found inconvenience on account of the different rules of practice in Chester and Delaware counties; and whether there is not an advantage in having uniformity in these things.

Mr. DARLINGTON. I will answer my colleague in this way: I have found no inconvenience whatever in understanding what the rule in Delaware courts is, and conforming my practice at that bar accordingly.

Mr. BROOMALL. The gentleman from Chester has a large line of practice at the Delaware county bar, and yet I will venture to say that he cannot now tell the return day in Delaware county.

Mr. DARLINGTON. It is not necessary for me to know the return day; I can always get somebody to take the return for me.

But it is not necessary that I should be accommodated in Delaware county. If I choose to go there and practice, and take my place with the resident members of that bar, it is my business to conform to their rules; and when the gentleman from Delaware comes to Chester county to practice at our bar, it is his business to conform to our rules. Now how are you to make a uniform rule applicable if you will allow one system to prevail in one place and a different system in another? Inevitably it is impossible. Then is it necessary that we should have one return day in all the counties of the State? Not at all. In Chester county we have a system that suits us better than any other, an improvement above all others, and my only astonishment is that all others have not conformed to it.

As I said before, we make every writ returnable in ten days after it is served; and upon the face of the writ every man is taught, by reading it, that he must enter his appearance at ten days from that time. If he does not, upon the plaintiff filing his statement, judgment goes against the defendant; and if he makes no defense execution goes with the judgment. Thus we facilitate the administration of justice. If a man has an honest claim against another, he wants to know at the end of ten days whether this claim is to be fought or not, and unless the defendant can put in his affidavit of defense, setting forth the nature and character of it, judgment must be given for the honest claimant. Such a rule is applicable in our court because we have a special law there upon that subject, and we have no disposition to change it.

Now, I maintain that there is no necessity for a general law that should compel us to come under the system of Lancaster county, for instance, where I am told they must take a rule to plead in three months; and if an appearance is not entered within that time they may take three months longer in which to plead. Or why should we be compelled to come under the system of Montgomery county, where, I understand, they settle all appeals before a justice on an action for money received, or something of that kind, no matter what the action is, even though it be an action for trespass? Why, I say, should we not have those rules which we deem to be best? If the Lancaster bar think it best to wait three months for a plea, let them have it so, if they desire it. If we in Chester county want to get through our business faster, and have an execution issued and the money collected long before return day would arrive in Lancaster county, why not let us have it so? If in Montgomery county they desire to have a case of trespass before a justice tried as if it were an action for money received, would they expect any other county to conform to their mode of practice? We in Chester county find no fault with their system of procedure; we must only conform to it if we practice in their courts. If we go there to browse upon their pasture, we must become acquainted with and understand their rules. If we go to Lancaster county we know that we must wait three months for a plea; but that is our business, and if we think the practice is too slow we can stay at home where the business of our courts is conducted with more rapidity.

Mr. D. W. PATTERSON. Will the gentleman from Chester permit himself to be interrupted?

Mr. DARLINGTON. I would rather not, if it is to be taken out of my time. I desire to occupy my ten minutes, but do not desire my time to be extended.

Mr. D. W. PATTERSON. I only desired to protest against the gentleman putting the old rules of Chester county upon Lancaster. We never had such a rule in Lancaster as he attributed to us, although it did once exist in Chester. [Laughter.]

Mr. DARLINGTON. Well, I will tell you what we do not do in Chester county. We do not take judgments in open court. How many days are spent in Lancaster county at every term by taking judgments in open court? This system is entirely antiquated with us; I do not know how it is elsewhere; but if it suits them

in Lancaster county, let them have it. If we prefer the tenth day after a writ is served as the return day, why should we not have it? If we choose to have a rule to plead in twenty days after service, why should we not have that? Why should we be compelled to wait thirty days, if twenty suits us better? Why should Philadelphia be compelled to wait twenty days, if ten would suit them better? Why should we be compelled to so vary our rules of practice, when we are perfectly satisfied with them, in order to make the practice in all the courts of the State uniform?

The CHAIRMAN. The Chair regrets to inform the gentleman from Chester that his time has expired.

Mr. DARLINGTON. No, sir, no regrets. [Laughter.] I have said enough. [Laughter.]

Mr. BOYD. Mr. Chairman: I only desire to explain, in answer to the gentleman from Chester, in regard to the rules which he stated were in force in Montgomery county for trying appeal cases. It is true that we do try appeal cases upon the common money accounts, as for money had and received. It is a practice that originated sometime during the last century, I do not remember the date, [laughter,] but it was originated then by a few members of the bar, and has been acquiesced in as a practice ever since. It has been found to work badly, like many others of those antiquated rules that we have now in use; and the inconvenience resulting from these old practices, in many parts of the State, was one reason which induced the Committee on the Judiciary to report a section requiring a uniform set of rules to pervade all the courts throughout the Commonwealth. One of the reasons why this was thought wise was, that in case I should have occasion to go to West Chester—which God forbid—I should know exactly what their rules of practice are. And if my friend (Mr. Darlington) should have occasion to come to Montgomery—which God forbid—[laughter] that he, too, would know exactly what our rules are. Therefore it was that the Committee on the Judiciary thought that it would be eminently wise to have a uniform set of rules to govern all the courts in their practice. The proviso, which has been aimed at by my friend from Schuylkill, (Mr. Bartholomew,) was meant to reach particular cases, perhaps some of those mentioned by the gentleman from Chester. If he would see proper to send

them to the Supreme Court it would be found that they could be used uniformly throughout the State, or if there was any special reason for a special rule in a special case, the Supreme Court might, if they saw proper, allow such a rule to be adopted. On the whole, it was thought best to report this section in its present form, and I trust that the committee of the whole will sanction it.

Mr. HANNA. Mr. Chairman: I would like to call the attention of the chairman of the Committee on the Judiciary to the language of the section as it stands. It requires that the Supreme Court shall provide rules and regulations for general system of practice in all the courts of record. Now I am somewhat in doubt whether that is intended to compel the judges of the Supreme Court to draw up, for the use of the bar of the Commonwealth, a code of practice, or a system of rules of court. But after listening to my friend the chairman of the Committee on the Judiciary, I am satisfied that his committee meant rules of court.

I submit from our experience in this matter that on calm reflection all must be satisfied that is an impossibility to do that. It is an impossibility for the judges of the Supreme Court to prepare a system of court rules for all the courts that this Constitution contemplates in the Commonwealth.

Mr. BOYD. If you will look at the third and fourth lines of the printed section you will find exactly that our object was to provide rules and regulations for a general system of practice in all the courts. It means just exactly what it says.

Mr. HANNA. I am satisfied from listening to the chairman of the Committee on the Judiciary—

The CHAIRMAN. The Chair cannot allow any disrespect to absent members of the Convention. The chairman of the Committee on the Judiciary is not present.

Mr. HANNA. The gentleman from Montgomery (Mr. Boyd) announced that he took the place of the chairman of the Committee on Judiciary in the absence of that gentleman.

The CHAIRMAN. No reflections can be allowed by the Chair upon the chairman of the Committee on the Judiciary during his absence.

Mr. HANNA. I do submit, as I remarked a little while ago, that such a plan as is here proposed would be a physical impossibility. Let us reflect for one moment. We propose to establish a Su-

preme Court, then courts of common pleas, then orphans courts, then probate courts. Now, sir, is it possible that the judges of the Supreme Court, elected from the different sections of the Commonwealth, are sufficiently familiar with the wants of the bar and of the people in all the localities of the State to prepare a code of rules of court that will be satisfactory to the bar of the State? I submit that they cannot do it. All these various courts are to be provided for, and what will suit the bar of one section of the State may not suit the bar of another section of the State. Hence has arisen the custom under which we now act that the courts of the various counties and the various judicial districts have the power and authority to ordain and establish such rules as they think proper themselves.

I submit that this is the best system. We have for years past been satisfied with it. In this section of the State, what have our judges done? They have submitted the matter to leading members of the bar; those members of the bar have prepared a code of rules and submitted them to the court and they have been approved by the court, and we are all satisfied with them.

The gentleman from Pittsburg a while ago referred as an illustration to the fact that the Supreme Court had established rules of practice in equity for the entire State. That may be true; but they are only the rules of the Supreme Court. Take our common pleas; they have adopted their code of rules both in law and equity; and then we have our orphans' court rules, our quarter sessions rules, and everything of that kind. Is it possible for the judges of the Supreme Court to draw up a set of rules for all the various courts throughout the Commonwealth that will be entirely satisfactory?

I do trust that we shall not in the Constitution of the State place such a duty upon the judges of the Supreme Court. It is a pure matter of regulation at all events, which heretofore has been left to the different courts in pursuance of acts of Assembly. I think that is the proper place to leave it. Why, sir, we are continually adopting sections in this Constitution taking away from the people of different portions of the State the means of governing themselves in other particulars, and now you propose to tie the hands of the bar throughout the whole Commonwealth by one uniform set of

court rules. I trust we shall not establish any such precedent as that.

Mr. BOYD. Allow me to correct the gentleman. I understood him to say that the district court and the court of common pleas in Philadelphia had equity rules of their own.

Mr. HANNA. Not the district court, but the common pleas.

Mr. BOYD. I beg to state to the gentleman that the rules in equity which were adopted by the Supreme Court have been applied to every court of common pleas in the State. Your equity rules in the common pleas here are the same as they are in the other courts of common pleas throughout the State and are uniform throughout. They were fixed up by the Supreme Court.

Mr. HANNA. I am very willing that my friend from Montgomery should remind me of that fact.

Mr. DALLAS. Mr. Chairman: I had the honor to be a member of this Judiciary Committee and to have yielded to the section under consideration my assent, because I understood it to be the general desire of members of this Convention residing outside of the city of Philadelphia, that such a section should be placed in the Constitution, but I could by no means yield my assent to this section if the amendment proposed by the gentleman from Schuylkill should prevail.

If it is the desire of those gentlemen who come from other sections of the State to have a constitutional provision requiring that all rules of court shall be uniform throughout the State outside of the city of Philadelphia, I have no objection to their adopting such a section. But for the city of Philadelphia where our rules have grown into a volume, now almost as large as one of the volumes of our Debates, and have come to be understood by the bar and by the bench—that that system which has so grown up shall be wiped out by a constitutional provision and utterly disturbed, I cannot consent. It is utterly impossible that this Convention shall wipe out the system of practice which we have in the city of Philadelphia as the result of the growing wisdom of the bench and the bar of this county ever since the beginning of the Commonwealth, and then substitute for it any thing else that will suit us as well and also suit every other court in the whole Commonwealth of Pennsylvania.

Why, sir, when the equity rules were adopted which the gentleman from Mont-

gomery truly says have been applied to the courts of common pleas all over the State, the equity practice of the State of Pennsylvania was in its infancy. Equity practice grew very slowly and was yielded to the courts by the people very cautiously. Little by little was equity jurisdiction added to the powers of our courts, and at the time the commission of very able gentlemen who prepared those equity rules met for the performance of their duties, the equity system was so new, the equity practice was so lately formed, that it was a proper subject for codification; and the equity rules that they gave us, needing amendment now perhaps in some particulars, were made because the want for them was apparent and there was nothing to supply them if we had them not. I say now that so far as this city is concerned, with its numbers of judges, with its very varied and extensive practice, with its large body of rules already well understood, that to undertake to force us to adopt some new system of rules of common law that will suit the rest of the State is to impose upon us what I do not believe any member of the bar or bench of Philadelphia county would ask for, and it would be unjust and unfair to us.

Therefore leave the proviso to the section permitting us to say whether we shall retain our present rules or not, and you may do as you please with the rest of the Commonwealth. But I cannot, for one, vote for that section unless you leave in the proviso. Why, sir, I have in my library a copy of the rules under which the gentleman from Schuylkill practices. They are a very thin volume, hardly bearing binding. I have no doubt those rules suit that bar very well, for if they did not I have no doubt the bar to which the gentleman belongs would soon make them suit; but it cannot be pretended that that little code of rules would suit us here in Philadelphia. No man in his senses can suppose it; nor would it be fair, on the other hand, that we should impose upon that bar the whole mass of the rules that we have necessarily adopted in Philadelphia.

Mr. WORRELL. Mr. Chairman: I have an amendment to move.

The CHAIRMAN. The Chair will remind the delegate from Philadelphia that there is already an amendment to an amendment pending, and no further amendment is in order. The question is on the amendment offered by the delegate from Schuylkill (Mr. Bartholomew) to the

amendment offered by the delegate from Delaware (Mr. Broomall.)

The amendment to the amendment was rejected, there being, on a division: Ayes, ten, less than a majority of a quorum.

Mr. WORRELL. I move to amend, by inserting in lieu of the section—

The CHAIRMAN. There is an amendment pending.

Mr. WORRELL. I withdraw it for the present.

The CHAIRMAN. The question is on the amendment offered by the delegate from Delaware (Mr. Broomall) to strike out all from the word "be," in the seventh line, to and including the word "be" in the eighth line.

The amendment was agreed to, there being, on a division: Ayes, thirty-four; noes, ten.

Mr. WORRELL. Now I move my amendment to strike out the section and insert in lieu thereof:

"All the courts of the Commonwealth shall adopt and publish rules for the orderly transaction of business, having regard as far as practicable to the chronology of the suit or issue or prosecution or indictment."

I offered this proposition in Convention at one of the sessions in Harrisburg in November last. I think the rules of practice in the various courts should be fixed and determined by the several courts, each for itself. I do not think that it is within the province of the Supreme Court to fix the rules of practice in all the courts in all the different judicial districts of the Commonwealth. I think those who understand the business in each district and what the proper and speedy transaction of that business will require, to wit, the judges of the districts, are the proper persons to establish rules for practice in such district; and for that reason I have offered the proposition that the *various courts* of the Commonwealth shall adopt and publish rules for the orderly transaction of business within their judicial districts.

Mr. BOYD. Allow me to ask the gentleman what he means by "chronology."

Mr. WORRELL. Yes, sir, I will tell you what I mean before I get through. The latter part of the proposition proposes that the courts shall have regard as far as practicable to the chronology of the suit or issue, or prosecution and indictment; and that is intended to meet at least two evils. I believe one of the most serious complaints in this Commonwealth to-day

is of the manner in which the district attorney's offices are managed. When a bill of indictment is formed, in many instances the defendant and the prosecutor, with their witnesses, are kept dancing attendance upon the court at the caprice of the district attorney, until it pleases him to present the case for trial. I propose that the courts of quarter sessions shall be required to adopt rules in order that the citizens may know just at what time and in what order their cases shall be tried. I think it is one needed reform that there should be rules for orderly practice in the courts of quarter sessions of the various counties of the State.

For that reason I have inserted the provision that regard shall be paid to the chronology of the prosecution or indictment. There ought to be some such rule. Parties ought to know, and the court ought to be able to state that the indictments will be tried according to a certain rule, which has been established by the court. The date of the indictment or the date of the prosecution ought to be the test of precedence, unless some legal reason for a continuance is submitted to the court. I firmly believe that indictments should be tried according to some such rule. It ought not to be in the power of any district attorney to say, "it does not at present suit my convenience to try this case." There ought to be the same character of rules for order of trial in the court of quarter sessions as in the civil courts, and the same regard should be paid to the proper, orderly and regular transaction of business in that court as is paid in the other courts. There is no district in the Commonwealth I believe in which civil cases are not tried either according to the date of the issue or the date of the suit. The trial lists are made up either from the term and number of the cases as ordered down, or from the date at which the issue was joined. But my amendment, as applicable to the civil courts, is intended to reach the cases in which issues are taken from the foot of the list and transferred under special order to the head of the list in very many instances to the delay and prejudice of the interests and rights of suitors in the court. I think this amendment would accomplish a great reform by providing that the various courts of the Commonwealth shall adopt and publish rules for the orderly transaction of business, having regard to the chronology of the suit or issue or prosecution or indictment.

My amendment may be open to the objection, that it is in the nature of legislation, but as the report of the Judiciary Committee presents the subject for our consideration, I trust that if any proposition be adopted, it will distinctly provide for the reforms I have indicated.

Mr. CORBETT. I hope the committee of the whole will vote down this whole section. We certainly shall have an article long enough to be respectable without it; and I think we can trust this matter of the rules which shall govern the different courts to the judges of the courts themselves. We are encumbering this instrument with enough of matter without adding this.

The CHAIRMAN. The question is on the amendment offered by the delegate from Philadelphia (Mr. Worrell.)

The amendment was rejected.

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

Mr. BUCKALEW. I am against this whole section, but I propose —

[Several Delegates. "We will vote it down."]

Mr. BUCKALEW. Very well.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 29. The judges of the several courts of record of this Commonwealth shall, in every civil 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 so filed, shall, upon the allegation of the plaintiff in error, be inquired into by the Supreme Court, by affidavit or otherwise, as may be provided by law, and the fact when established shall be conclusive ground of reversal.

Mr. DALLAS. I offer the following amendment, to come at the end of the section:

"Provided, That this shall not apply to the courts in the city of Philadelphia, by each of which there shall be appointed a phonographic reporter and his salary be fixed. Said reporters shall be sworn officers of the court, and their reports of evidence, and of the charge of the court shall in every case be conclusive upon the judge and the parties."



Mr. Chairman, the section now before the committee proposes to provide that the judges of the courts shall reduce their charge to writing, and that, should the jury after they have left the court-room to deliberate, return and ask for further instructions, anything that may then be said to them from the court shall also be reduced to writing. Whether such a course as is suggested by this section would or would not be practicable throughout other parts of the State, I cannot say. That it would be utterly impracticable in the city of Philadelphia, I have not one moment's hesitation in saying.

[Several Delegates. "We will vote it down."]

Mr. DALLAS. Then, Mr. Chairman, as that seems to be the sentiment of the committee, and as I am the last person to desire to detain them unnecessarily, I will withdraw my amendment, with the understanding that there is to be an immediate vote on this section, and then I may offer it again as an additional section.

The CHAIRMAN. The question is on the section.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 30. All applications for change of venue in any cause pending in any court of record shall be made to the Supreme 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.

Mr. S. A. PURVIANCE. I move to amend the section so as to make it read: "All applications for change of venue in any cause pending in any court of record shall be made in accordance with the provisions of a general law, and not otherwise."

Mr. MACVEAGH. We have a provision in the article on legislation, I think, that this shall be provided for by general law. I think that has already passed.

Mr. S. A. PURVIANCE. No, sir, it has not. I find by referring to the report of the Committee on Legislation as passed by the committee of the whole, a prohibition on the Legislature changing the venue of civil or criminal cases by special law; and therefore I simply move to strike out all of this section that applies to the application to the Supreme Court and let it be done under general law by the Legislature.

Mr. CORBETT. We have adopted a section in the report of the Committee on Legislation providing that applications for change of venue shall be made in the court where the cause is pending. Now, if it be proposed to give the parties seeking a change of venue the chance to apply also in the Supreme Court, I have no objection.

Mr. S. A. PURVIANCE. Where is that provision?

Mr. CORBETT. You will find it in the report of the Committee on Legislation.

Now, I have no objection that the party shall have the opportunity of applying in the Supreme Court if he desires to do so; but to require every party who may desire a change of venue to go to the Supreme Court will only make such applications very onerous upon suitors. I am opposed to the section standing as it is. If it be amended so as to allow the application to be made in either court, I shall have no objection at all.

Mr. NILES. It seems to me that this section in the pending report is wholly unnecessary. We have provided in the article upon legislation as follows: "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." That is all we want.

Mr. S. A. PURVIANCE. I withdraw my amendment.

Mr. BUCKALEW. Before this subject passes by, I desire to call attention to the legislation we have now by which a certain class of corporations can move causes around the State at their pleasure. If we are to touch this subject of change of venue in any way whatever, I think we ought to attend to that. I know that where cases involving the right of way now arise in the courts in my section of the State, they are carried hap-hazard all around the country, and taken away for the mere purpose of protracted delay. If we are going to enter on the subject at all, I think there ought to be some consideration of that matter.

Mr. KAINE. Will the gentleman allow me to ask him how they get that done?

Mr. BUCKALEW. By legislation.

Mr. KAINE. By special law?

Mr. BUCKALEW. No; by a general law.

Mr. RUSSELL. The general railroad law.

Mr. BUCKALEW. What I merely meant to say at this time was that I agree we had better vote this section down, inasmuch as the same subject-matter is contained in another report; but when that report

comes up I hope that we shall do something on the point which I have mentioned.

The CHAIRMAN. The question is on the adoption of the section.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 31. 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.

Mr. LILLY. There are no appellate districts I believe now, and that clause ought to be stricken out.

Mr. KAINE. That section is the law now, and we do not want it in the Constitution at all.

Mr. DARLINGTON. The law now is that the Governor shall appoint the reporter. This section proposes to give the appointment to the Supreme Court. Now, upon the general principle that we ought to confer no power of appointment upon the courts that we can avoid and that is not necessary, I think we had better leave this matter of the appointment of a reporter exactly where it is now under general law, and vote down this section.

Mr. BIDDLE. There are two subjects embraced in this section totally distinct, one is in regard to the appointment of the reporter, the other the prothonotary. Let us take them separately. I myself see no reason for changing the present mode of appointment of the reporter. Other gentlemen may agree with me or may differ from me, but that is a totally different question from the other. I ask for a division, stopping with the word "decisions:" "The Supreme Court shall appoint one reporter of its decisions." Let us have that voted on separately.

Mr. KAINE. Allow me to suggest to the gentleman from Philadelphia that the Committee on Offices have had under consideration and will report with regard to the clerks of courts.

Mr. BIDDLE. What I mean to say is that there are two different subjects embraced in this section. I ask for a division of it.

Mr. DALLAS. I rise to make an inquiry. Is the section divisible at that point?

The CHAIRMAN. The delegate from Philadelphia has called for a division of the question. The Chair will remark that it is divisible, but the Chair would sug-

gest to the delegate to divide the question in this way:

"The Supreme Court shall appoint one reporter of its decisions who shall hold office for six years, subject to removal by the court."

Mr. MACVEAGH. I move to strike out the words "one reporter of its decisions and" and also the word "each."

Mr. BIDDLE. That will reach the same purpose.

The CHAIRMAN. The call for the division is abandoned, and the question is on the amendment of the delegate from Dauphin.

The amendment was agreed to.

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

Mr. DARLINGTON. I move to strike out "six" and insert "three" years as the term of office.

Mr. NILES and others. Let us vote it all down.

The CHAIRMAN. The question is on the amendment of the delegate from Chester.

The amendment was agreed to.

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

The section as amended was rejected; there being on a division ayes eight, less than a majority of a quorum.

The CHAIRMAN. The next section will be read.

The CLERK read section thirty-two, as follows:

SECTION 32. The parties, by agreement filed, may in any civil case dispense with the trial by jury and submit the decision of such 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.

Mr. NEWLIN. Mr. Chairman: I am in favor of the principle involved in this section; but, inasmuch as the subject of trial by jury is one that in the Constitutions of all the States is provided for in the bill of rights and inasmuch as this matter has been acted on by the Committee on the Bill of Rights, I submit that it should come up on the discussion of the report of that committee. I trust the matter will not be provided for piecemeal and that when that report comes up it will be disposed of and the section voted down now and the question taken up at that future time. At the suggestion of others,

however, I move to strike out all the section and insert:

"The right of trial by jury shall remain inviolate, but may be waived by the parties in all civil proceeding, and the law and the facts shall be determined by the court with the right of appeal in a manner to be prescribed by law. In civil proceedings three-fourths of a jury may find a verdict after such length of deliberation as may be required by law."

Mr. Chairman,—

Mr. DALLAS. If the gentleman will give way, I will move that the committee rise.

Mr. NEWLIN. I give way for that motion.

Mr. BROOMALL. Is the motion amendable?

The CHAIRMAN. It is not.

Mr. BROOMALL. I was going to move, inasmuch as we are now through—

The CHAIRMAN. The motion is not amendable, and not debatable. The question is on the motion that the committee rise, report progress, and ask leave to sit again.

The question being put, there were, on a division: Ayes thirty-five, noes thirty.

So the motion was agreed to.

The committee rose, and the President having resumed the chair, the Chairman, (Mr. Harry White,) reported that the committee on 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 to-morrow.

Mr. LILLY. I move that we adjourn.

The motion was agreed to, and (at five o'clock and forty-nine minutes P. M.) the Convention adjourned.

## ONE HUNDREDTH DAY.

THURSDAY, May 15, 1873.

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

Mr. WALKER took the Chair as President *pro tempore*, and submitted the following communication, which was read by the Clerk :

"Being necessarily absent from the Convention, I hereby, under the sixth rule, appoint the Hon. John H. Walker to act as President *pro tempore* until the adjournment to-morrow.

W. M. MEREDITH, President.

THURSDAY, May 15, 1873.

Prayer by the Rev. Jas. W. Curry.

The Journal of yesterday was read and approved.

### PETITIONS AND MEMORIALS.

Mr. HAY presented a memorial of one hundred citizens of Allegheny county, praying for the acknowledgment of Almighty God and the christian religion in the Constitution of the State, which was laid on the table.

Mr. MACCONNELL presented three petitions from citizens of Allegheny county of a like character, which were laid on the table.

Mr. D. N. WHITE presented three petitions of citizens of Allegheny county of a like import, which were laid on the table.

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

### ACCOUNTS FOR PRINTING.

Mr. HAY. I move that we proceed to the further consideration of the resolutions appended to the report of the Committee on Accounts, which has been printed, so that the matter be disposed of.

The motion was agreed to, and the Convention resumed the consideration of the first resolution reported by the Committee on Accounts, as follows :

"Resolved, That no warrants be drawn for payments to the Printer of the Convention."

The pending question being on the amendment offered by Mr. MacConnell to strike out the word "no" in the resolution, and to add the words, "for so much

as he may from time to time be entitled to receive."

Mr. MACCONNELL. Mr. President : When I offered the amendment yesterday morning, I had only given to the act of Assembly a cursory examination. On that examination I thought the committee wrong in their construction. Since that time I have examined it more carefully and I have come to the conclusion that I was mistaken and that the committee were right. Therefore I made a mistake when I offered the amendment. I therefore now ask to withdraw that amendment and offer another in its place.

The PRESIDENT *pro tempore*. The delegate withdraws the amendment offered and asks to substitute what will be read by the Clerk.

The CLERK. It is proposed to amend by adding to the end of the resolution the following words :

"But the Committee on Accounts shall continue to ascertain and from time to time report to this Convention what sums may be due to the Printer, and copies of such reports, when approved by the Convention, shall be forthwith sent to the Auditor General by the Clerk."

Mr. J. W. F. WHITE. Mr. President : At the time the resolution was reported by the Committee on Accounts and Expenditures, I felt that the position taken by the committee was the true one. The reading of the law satisfied me that the late act of the Legislature made it the duty of the Auditor General to audit and settle the accounts of the Printer of the Convention. I have since learned, and it may be proper to state that fact here this morning, as our President is absent, that that also is the view of the President of the body. I felt it impossible for us, as a Convention, to settle and adjust finally the accounts of our Printer; and as we have a definite article of agreement with him, I felt that it was proper to refer that matter to the Auditor General of the State. At the same time I was unwilling, if it could be retained, that this Convention should let go entirely all hold or control of the printing and binding expenses

the Convention. I feel, however, that it is impossible for us, even by appointing a committee that shall act after our Convention shall have finally adjourned, to settle and adjust this matter properly. It must ultimately be referred to the Auditor General.

But the amendment proposed this morning by my colleague, (Mr. MacConnell,) it seems to me, ought to be accepted by the chairman of the Committee on Accounts and Expenditures, if he has the power to accept it. I trust he will think about it, and if he has the power to do so, I trust he will accept it, because it provides that our Committee on Accounts and Expenditures shall ascertain, as we progress, the amount due to the Printer under our contract, and report that to the Convention, and when approved by the Convention, that will be sufficient to the Auditor General, and he will pay and audit the account of the Printer on the report of the Committee on Accounts and Expenditures, approved by the Convention. That will leave very little to be adjusted by the Auditor General after we adjourn, and that little must be left to him. We cannot meet as a Convention to approve the account of the Printer after the whole work is finally accomplished; but the Committee on Accounts and Expenditures can make a calculation, and can report it up to time of our adjournment, leaving the balance to be adjusted by the Auditor General, in pursuance of the act of Assembly, on the reports that have been made to this Convention up to the time of adjournment. I think that that would be carrying out the object of the act of Assembly, and would prevent any imposition or fraud, if gentlemen fear that such might be practiced.

I trust that the pending amendment will be accepted by the chairman of the Committee on Accounts and Expenditures, and if that be done I think that the resolution thus amended would be passed without any further discussion in this body, particularly as I have been informed that the view of the President of this Convention is in harmony with the report, and does not consider that it is his power or his duty to issue warrants for the payment of the Printer; and I suppose that this proposed amendment is all that can be done in the way of guarding against improper accounts.

Mr. HARRY WHITE. Mr. President: I entirely concur with the views expressed by the delegate from Allegheny (Mr.

J. F. White) in relation to this amendment. I do not sympathize with the reasons that prompted the delegate from Allegheny (Mr. MacConnell) who offered the amendment yesterday to withdraw that amendment to-day. I think he was right yesterday. I believe that a majority of the Convention was right on this question and the Convention of Accounts and Expenditures was wrong.

I have just a word or two of explanation. I think that the Committee on Accounts and Expenditures have been sticking in the bark about this matter. The proposition lying now on the Clerk's desk is, practically, all we want to get at. All that this body practically wants to get at is the supervision of the accounts primarily of the State Printer by this Convention.

The amendment offered by the delegate from Allegheny (Mr. MacConnell) will secure that object and will be in entire harmony with the practice of the government everywhere.

Let me call the attention of the Convention to a matter that seems to disturb some persons. Some persons are perplexed as to the difference between certain accounts being settled by the Auditor General and certain accounts being paid directly on the warrant of the presiding officer of a legislative body by the State Treasurer. There is no difficulty about that. I call the attention of the Convention to the eighth section of the act of 1811, where it is provided:

"The State Treasurer shall pay all grants, salaries, annuities and pensions established by law, and make all other payments which are or shall be so fixed by law that the sum to be paid cannot be affected by the settlement of any account, nor increased nor diminished by the discretionary powers of the Auditor General and State Treasurer."

This fixes the law by which the salaries of members are paid on the warrants of the presiding officers of the legislative bodies. The Auditor General cannot add to nor take from. But as to accounts like the accounts of the Public Printer, the Auditor General under the law first settles them. Then he transfers them over to the State Treasurer; the Treasurer then re-examines such accounts and returns them to the Auditor General, and warrants are drawn accordingly. Then at the end of every month the State Treasurer makes report to the Auditor General

of all the expenditures which are made during the preceding month.

That is the way it is managed, and that is the reason there was a different mode provided in the act of Assembly last year. Provision was made directly for the payment by the State Treasurer of the salaries of members of the Convention, because under the laws before they would be paid directly by the State Treasurer, and the only jurisdiction that the Auditor General had over them was, that at the end of every month they were returned to him as vouchers.

The amendment offered by the delegate from Allegheny will secure all this matter. It will settle the accounts in a most reasonable basis, and as the Committee on Accounts and Expenditures have reported a resolution that so much has been done and so much is due to the State Printer, we should transfer to the Auditor General a certificate or resolution accordingly. I am in favor of the proposition as modified, and if any one doubts our full authority under the resolution to supervise the Printer's accounts I will offer an additional amendment.

Mr. BROOMALL. Mr. President: I look upon the change that has been made by the modification of the amendment as somewhat remarkable. It is in fact giving up the whole question, but it is drawn in such a manner as to look as if we still retained some power over the State Printer. We certify to the Auditor General that there is so much due and he pays no more attention to it, not being bound any longer to require the warrant of our President, than if it was so much waste paper.

I have always said that legislative bodies are not dishonest, but I have also said that they are excessively manageable, and it is not difficult for a man of thirty years experience to obtain his way with an hundred and thirty-three good-natured men such as we are. I knew when the State Printer made his appearance in this Hall yesterday that this thing would result exactly as it is going to result. From the very commencement he, having had years of experience in moulding and shaping legislative bodies, not making them dishonest but managing them, has been playing that game upon us.

Mr. MACCONNELL. Will the gentleman allow himself to be interrupted?

Mr. BROOMALL. Just hear me out and I will then answer any question. He has been playing that game upon us. He would not take the printing at his own bid, but managed to get us good-naturedly to let him have it under his better contract with the State, allowing him for extras that we had cut off, and that he had cut off in his bid; and every time he has appeared here, it has been to get some boon from us. He came here some four or five days ago, and the result was we were going to throw up all the business to himself and his Harrisburg friends, to be managed as they liked. He went away supposing it was safe. When the resolution came to be offered, it was considered by some gentlemen here who desire to watch State officials, as being somewhat snaky—not that the Committee on Accounts, in whom I have the highest confidence, had any idea of introducing a snake here, but that they had one imposed upon them, and opposition was made by the gentleman from Columbia, (Mr. Buckalew), and the gentleman from Dauphin, (Mr. MacVeagh), and others, upon the ground that the State Printer and his friends were mistaken in the law. I shall not argue the question whether or not they are mistaken. It is too plain for argument. There is not a question about it. Nobody but the State Printer could have put the construction that these gentlemen have put on that law; but it suited his purposes and that construction has been put upon it, not by the committee, because they are only asking this Convention to construe the law for their guidance.

Now, sir, I am for the amendment offered by the gentleman from Allegheny (Mr. MacConnell) yesterday, without modification. I am for keeping this matter in our own hands. I do not intend myself to part with the power to audit the accounts of the employees of this body until we are finally done. I do not propose to give up that power to anybody; and if I am the only man who so votes, I shall vote against the amendment as it is now shaped and will vote in favor of the amendment offered by the gentleman from Allegheny yesterday, and I trust those who have any regard for the public purse will vote the same way.

Mr. MACCONNELL. I rise to say that I had no conference or communication at all with the State Printer on this subject, or with any person who came from him to me, so far as I know.

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Allegheny (Mr. MacConnell.)

Mr. MACVEAGH. Let it be read.

The *CLERK* read as follows :

"But the Committee on Accounts shall continue to ascertain and from time to time report to this Convention what sums may be due to the Printer, and copies of such report, when approved by the Convention, shall be forthwith sent to the Auditor General by the Clerk."

Mr. HARRY WHITE. I move to amend the amendment by adding the following clause : "And no payments shall be made to the State Printer without the previous authority of this Convention."

Mr. LILLY. How will that authority be given?

Mr. KAINE. By resolution.

Mr. COCHRAN. I have no disposition at all to enter into any discussion on this question this morning. The amendment which has been offered by the gentleman from Allegheny (Mr. MacConnell) was, I thought, a fair proposition. It kept this matter within the control of the Convention as long as it possibly could be kept within its control, and I thought it was a fair and proper adjustment of the whole matter. We know what the views of gentlemen are on this subject, and we know what the difficulties are in the way of this particular matter. I hope, therefore, that the amendment to the amendment will not be adopted, but that the amendment of the gentleman from Allegheny will be agreed to as it stands. I think that will be entirely satisfactory to the Committee on Accounts, and it will impose upon them the necessity of examining these accounts up to the very time of the adjournment of the Convention.

The amendment to the amendment was agreed to, there being on a division, ayes, forty-six ; noes, twenty.

The *PRESIDENT pro tem.* The question now is on the amendment as amended.

Mr. HUNSICKER. Let it be read as it now stands.

Mr. BOYD. I ask for the reading of the whole proposition as it will stand as amended.

The *CLERK* read as follows :

*Resolved*, That no warrants be drawn for payments to the Printer of the Convention ; but the Committee on Accounts shall continue to ascertain and from time to time report to this Convention what sums may be due to the Printer, and copies of such report, when approved by

the Convention, shall forthwith be sent to the Auditor General by the Clerk ; and no payments shall be made to the State Printer without the order of this Convention.

The amendment as amended was agreed to, there being on a division, ayes, forty-nine ; noes, twenty.

On the question of agreeing to the resolution as amended, the yeas and nays were required by Mr. Lilly and Mr. Davis, and were as follow, viz :

#### Y E A S.

Messrs. Ainey, Baer, Bartholomew, Beebe, Biddle, Bigler, Black, Charles A., Brodhead, Campbell, Carey, Carter, Clark, Cochran, Collins, Darlington, De France, Elliott, Ewing, Funck, Gibson, Guthrie, Hanna, Harvey, Hazzard, Hemphill, Heverin, Horton, Kaine, Lamberton, Landis, Lawrence, Long, MacConnell, MacVeagh, Mann, Metzger, Minor, Mitchell, Newlin, Patterson, D. W., Purviance, John N., Purviance, Sam'l A., Ross, Smith, H. G., Smith, Henry W., Stanton, Struthers, Turrell, Van Reed, Walker, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F. and Wright—55.

#### N A Y S.

Messrs. Achenbach, Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bowman, Boyd, Broomall, Brown, Corbett, Corson, Craig, Curry, Davis, Dunning, Edwards, Ellis, Fulton, Gilpin, Hay, Hunsicker, Lear, Lilly, M'CLean, M'Culloch, M'Murray, Niles, Palmer, G. W., Patton, Pughe, Reed, Andrew, Russell and White, David N.—34.

So the resolution as amended was adopted.

*ABSENT*.—Messrs. Addicks, Andrews, Armstrong, Bannan, Bardsley, Black, J. S., Buckalew, Cassidy, Church, Cronmiller, Curtin, Cuyler, Dallas, Dodd, Fell, Finney, Gowen, Green, Hall, Howard, Knight, Littleton, M'Camant, Mantor, Palmer, H. W., Mott, Parsons, Patterson, T. H. B., Porter, Purman, Read, John R., Reynolds, Rooke, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Woodward, Worrell and Meredith, *President*—43.

The *PRESIDENT pro tem.* The second resolution will be read.

The *CLERK* read as follows :

"*Resolved*, That a copy of this report, and of the action of the Convention thereon, be transmitted to the Auditor General for his information ; and that the Auditor

General be also informed that Benjamin Singerly has been already paid the sum of five thousand dollars on account of printing done and books furnished for the Convention."

Mr. DARLINGTON. I presume that this resolution is unnecessary now.

Mr. HARRY WHITE. Oh, no!

Mr. DARLINGTON. I will ask the chairman of the Committee on Accounts and Expenditures if this resolution is not unnecessary now?

Mr. HAY. I regard it as necessary, and think it should be passed.

The resolution was agreed to.

#### SALARIES OF MEMBERS.

Mr. BAER. Mr. President: I move that the resolution offered on Friday, the second of May, in relation to the compensation of members and officers of the Convention, be taken from the table and now considered.

Mr. HARRY WHITE. I move that the resolution be postponed for the present.

Mr. EDWARDS. What is the question?

The PRESIDENT *pro tem*. The gentleman from Somerset moves to proceed to the consideration of a resolution offered on the second of this month, and the question is on a motion of the gentleman from Indiana (Mr. Harry White) to postpone the motion of the gentleman from Somerset.

Mr. CLARK. I should like to have the resolution read.

The PRESIDENT *pro tem*. It will be read.

Mr. MACVEAGH. Let the Clerk state the resolution and the motion.

The CLERK read the resolution as follows:

"WHEREAS, The Legislature has repealed that portion of the act providing for calling a Convention to amend the Constitution, which fixed the salaries to be paid its members, and has appropriated the gross sum of five hundred thousand dollars for salaries and the other necessary expenses of the Convention; therefore, be it

*Resolved*, That the salaries of the members of the Convention are hereby fixed at —, and mileage at the rate of ten cents per mile circular, for not more than two sessions, (provided that the salary of the President shall be double that of the other members,) and that the Committee on Accounts be instructed to report a proposition, fixing the pay of the officers, for the consideration of the Convention."

The PRESIDENT *pro tem*. The question now is on a motion to postpone the consideration of this resolution for the present.

Mr. J. M. BAILEY. Suppose the motion to postpone is adopted, in what shape will it leave the resolution?

The PRESIDENT *pro tem*. It can be brought up at any time. The question is upon the motion to postpone.

The yeas and nays were required by Mr. Harry White and Mr. J. Price Wetherill, and were as follow, viz:

#### YEAS.

Messrs. Ainey, Alricks, Baily, (Perry,) Baker, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Campbell, Carey, Carter, Clark, Cochran, Corson, Darlington, Davis, Ellis, Ewing, Fulton, Funck, Gibson, Gilpin, Harvey, Hemphill, Hunsicker, Kaine, Lamber-ton, Landis, Lawrence, Lear, Lilly, MacConnell, MacVeagh, M'CLean, Minor, Newlin, Patterson, D. W., Purviance, Samuel A., Reed, Andrew, Ross, Smith, H. G., Smith, Henry W., Struthers, Walker, Wetherill, John Price and White, Harry—49.

#### NAYS.

Messrs. Achenbach, Baer, Bailey, (Huntingdon,) Barclay, Bartholomew, Bowman, Brown, Collins, Corbett, Craig, Curry, De France, Dunning, Edwards, Elliott, Guthrie, Hanna, Hay, Hazzard, Heverin, Horton, Long, M'Calloch, Mann, Metzger, Mitchell, Mott, Niles, Palmer, G. W., Patton, Pughe, Purviance, John N., Russell, S'anton, Stewart, Turrell, Wherry, White, David N., White, J. W. F. and Wright—40.

So the consideration of the resolution was postponed for the present.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Bannan, Bardsley, Black, J. S., Buckalew, Cassidy, Church, Cron-miller, Curtin, Cuyler, Dallas, Dodd, Fell, Finney, Gowen, Green, Hall, Howard, Knight, Littleton, M'Camant, M'Mur-ray, Mantor, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Read, John R., Reynolds, Rooke, Runk, Sharpe, Simpson, Smith, Wm. H., Temple, Van Reed, Wetherill, J. M., Woodward, Worrell and Meredith, *President*—43.

#### USE OF THE HALL.—EXPLANATION.

Mr. CUYLER. I desire the permission of the House to say a single word of explanation.



The PRESIDENT *pro tem.* Shall the delegate from the city have leave to make an explanation.

Leave was granted.

Mr. CUYLER. Yesterday the use of the Hall was granted by a resolution of the Convention to an association known as "the Women's Centennial Association." I am desired to say that the organization to which the use of the Hall was granted is not the Women's Centennial Executive Committee, a body created under authority of and under the control of the Centennial Commission. I do not desire to say a single word in depreciation of the organization to which the Hall has been granted or of the noble purpose which they are seeking to promote, in common with others of our fellow-citizens, but only that the Convention may not be mistaken by confounding the two organizations with each other. The one to which the Hall was granted is an independent organization; the other to which I have referred, the Women's Centennial Executive Committee, is an organization of ladies, presided over by Mrs. Gillespie, of this city, and was created by and exists under the direction of the Centennial Commission.

I merely desired to state this by way of explanation.

Mr. CORSON. I would like the gentleman to explain if this is the same organization to which Mr. Boyd devoted \$250,000 of our salaries at the Academy of Music? [Laughter.]

Mr. CUYLER. I think it is not.

Mr. J. W. F. WHITE. I would like the gentleman to state something more of this organization.

Mr. CUYLER. It is an organization of highly respectable ladies whose purpose is to promote the interests of the Centennial Commission, but it is so far abnormal that it is not under the organization known to the public as the Centennial Commission, although composed of very highly respectable ladies and having a very laudable purpose.

#### THE JUDICIAL SYSTEM.

Mr. EWING. I move that we resolve the House into a committee of the whole for the further consideration of the article 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. When the committee rose yesterday the question before it was the amendment offered by the delegate from Philadelphia (Mr. Newlin) to strike out the entire section (32) and insert the words which will be read.

Mr. NILES. I rise to a point of order.

The CHAIRMAN. The delegate from Tioga will state his point of order.

Mr. NILES. My point of order is that the amendment offered by the delegate from Philadelphia is not germane to the report of the committee or anything that we are considering. It properly belongs to the Bill of Rights. It is entirely revolutionary in its character, and it belongs there if it belongs anywhere. It has nothing to do with this report and is not germane to nor an amendment to the section which it proposes to strike out.

The CHAIRMAN. The point of order is not well taken. The Chair has not in its discretion the character of the amendments which gentlemen may offer. If they relate at all to the subject matter under consideration, they are pertinent. The point of order is not well taken. The amendment will be read.

The Clerk read the words proposed to be inserted by the amendment, as follows:

"The right of trial by jury shall remain inviolate, but may be waived by the parties. In all civil proceedings the law and the facts shall be determined by the court, with the right of appeal in a manner to be prescribed by law. In civil proceedings three-fourths of a jury may find a verdict after such length of deliberation as may be required by law.

Mr. NEWLIN. The committee will observe that it is proposed simply to allow the parties to waive a jury trial, and leave the law and facts to the court if they so desire.

The details are left to the Legislature.

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 all civil cases.

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 courts 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 assumed antiquity of jury trials, as we understand them, will be urged against any change.

It is commonly, but most erroneously, supposed that trial by jury, as now constituted, originated at a very remote period, some tracing it to the time of Alfred the Great; while by many it is thought to have been in use among 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 Scandinavian, the Teutonic and the Gothic nations. The rule requiring unanimity in juries is usually taken to be as ancient as the jury itself. It is an undeniable fact, however, that our present jury is not only purely English, but it has no greater age than from the middle of the sixteenth century.

Anciently in Norway, there was a court composed of thirty-six members, whose literal appellation was "law-amendment-men." They were presided over by a "law-man." In that rude age the "law-man" could recite all the laws. He at first had no voice in the deliberations; afterward 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.

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 ancient Germany the number was usually twelve, deciding both laws and facts by a majority merely.

Among 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 reached 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 nearly 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 be governed by 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.

It has been inaccurately conjectured even by some text writers, notably by Blackstone, that jury trial was secured or at least confirmed by the provision in Magna Charta, having regard to *judicium parium*, or the trials or judgment by one's peers. This phrase occurs in the laws of Henry I, and was borrowed from the capitularies of Louis IX, of France, in which country jury trials were not known till 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 fact. They also acted as witnesses. The majority ruled.

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 summoned 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."

In the reign of Edward III 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 found by the concurrence of nine out of twelve jurors.

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 treatises, 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 v. Mosely*, 2 Crompton & Meeson, p. 485, Mr. Baron Bayley says, that he had been unable to find any precedents of the common *subpoena 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.

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 evidence here briefly detailed, it is fair to claim that the change did not fairly 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 us ample reasons for abrogating what Hallam in his *Middle Ages* speaks of as that "preposterous relic of barbarism, the requirement of unanimity."

Mr. HAZZARD. Mr. Chairman: Experience seems to indicate that the reform contemplated in this amendment should pass. We have all witnessed the painful spectacle of one jurymen insisting upon his superior judgment and intelligence, and disagreement with eleven of his associates, thus necessitating a new trial of a cause that has already taken up the time of the court for several days, and involving great expense.

For my own part, I do not see any reason why three-fourths of a jury should not find a verdict in criminal cases, except perhaps, in the trial of capital offences, but there are certainly many reasons why it should be so in civil cases.

In the first place, it is fair to suppose that the whole panel is composed of persons of nearly equal or at least average ability, and especially after the special jury called to try the cause has been carefully pruned by challenges, &c., at least so nearly so that in any case the judgment of three jurymen, much less of two or even one, is superior to eleven others of average honesty and ability.

As a general rule, these dissenters are misled by misapprehension of the evidence, or of the charge of the court, or partiality for one of the parties in the case; or it may be has been improperly approached on the subject of his verdict, and my opinion is, whenever there are but two or three disagreeing jurymen, their opinion is against the judgment of the rest of the jurymen, but also of the court, and the bystanders who have carefully listened to the evidence and law of the case, and is generally a great surprise to everybody but himself.

It is the opinion of some that juries should be abolished altogether, and I am informed it is so in some countries; but at the same time I would not vote for that. I will vote that so large a majority as three-fourths may find a verdict in civil cases and at the same time I am sure I reflect the opinion of my constituents. It is logical and reasonable to conclude that the opinion of three to one is correct and safe.

Mr. GIBSON. Mr. Chairman: I am very glad indeed that this question has arisen here, and not upon the report of the Committee on the Declaration of Rights. I, for one, am unwilling that the symmetry of the Declaration of Rights should be interfered with in any particular. The declaration that "trial by jury shall be as heretofore, and the right thereof remain inviolate," I hope will ever continue to be a part of the Constitution of Pennsylvania, and remain unqualified in any particular.

In the section that has been reported by the Committee on the Judiciary there is nothing inconsistent with the declaration made in the Bill of Rights. I think, though, that it is entirely unnecessary, because I think that the right to waive a jury trial already exists, and that it is in the power of the Legislature to provide means by which parties can dispose of their cases without resorting to trial by jury. As an instance of this, sir, I would say that in my district—the Nineteenth judicial district—the Legislature in 1868 provided that causes, by the consent of the parties, should be submitted to a referee. The act is an enlargement of the sixth section of the original act on arbitrations, and under that act the counsels of the different parties agree upon a referee; the case is submitted to him; he writes down the whole of the testimony in the cause; the reasons for offering evidence and the objections against receiving it are made before him, and, just as in the case of a bill of exceptions, he gives his reasons for admitting or rejecting it, the whole of the evidence, however, being written. After that evidence is received points of law are submitted to him which arise in the case, upon which he gives a written opinion. He files his report, and on that report the court hears the entire case and decides it, and from the judgment that may be entered a writ of error lies. This was done because of the delay that there was ordinarily in the trial of causes by a jury. If causes can be submitted to arbitrators by means of compulsory arbitration, or if causes can be submitted to a referee by consent of the parties, I see no reason why this section should be adopted in the Constitution.

But, as I remarked at first, there is nothing inconsistent with the declaration made in the Bill of Rights in this section as reported by the Committee on the Judiciary. It simply provides that parties in civil causes may dispense with trial by jury, and ask or demand the decision of

the court upon the law and the evidence in the case. That has nothing to do with the Declaration of Rights or the provision in the Declaration of Rights in regard to the trial by jury, and I hope that this committee will not consider that this question has anything to do with the Bill of Rights. It is simply a matter relating to the judiciary and determining how and in what manner causes may be tried, whether by the court or by a jury. But, sir, I think the original section is defective in the particular that it provides simply that the parties shall ask the decision of the court. That is a great mistake.

The gentleman from Philadelphia, who has just addressed the committee on this question, (Mr. Newlin,) has spoken of a difficulty arising as to whether parties will agree to submit cases to the decision of the court or not; that is, questions may arise as to whether there is confidence in the judge or not; and if a party declines to submit his case to the decision of the judge, it may be said that he has not confidence in the judge. All that would be avoided by adding the words "submit the decision of such case to the court having jurisdiction thereof, or by the aid of a referee chosen by the consent of the parties." If these words were put in I should have no objection to this section. I do not think it can do any harm. Although I would rather it should be out of the Constitution altogether, still it would better the section very much and would avoid the difficulty suggested as to whether parties should submit to the decision of the court or not, and whether they have confidence in the judge or not.

But, sir, I cannot agree in any particular with the amendment proposed by the gentleman from Philadelphia. In the first place, his amendment is objectionable because it commences with the provision in the Declaration of Rights that trial by jury shall remain inviolate, and then immediately proceeds to destroy the right of trial by jury. There is an inconsistency in that itself which should be sufficient to condemn the amendment. A thing cannot be inviolate, and then in the very next breath violated, because it is a violation of the right of trial by jury to say that there shall be any qualification whatever with regard to it. Sir, there is no mistaking what is meant by trial by jury.

Mr. HAZZARD. May I ask the gentleman a question?

Mr. GIBSON. Yes, sir.

Mr. HAZZARD. Do we not waive that right in arbitrations and in juries before justices of the peace where only six men sit on the jury? Is it a violation of that right when it is waived all the time in our practice? It has been decided by the Supreme Court that an agreement to arbitration is not a violation of the Bill of Rights?

Mr. GIBSON. The gentleman misapprehends me entirely. I am not saying that the right of trial by jury may not be waived by the parties if they choose to do so; but when you say that the right of trial by jury, shall remain inviolate you mean that the right of trial by jury, unless the party waive, it shall remain inviolate. You cannot say that it shall remain inviolate, and then provide that one-half the jury or two-thirds of the jury or three-fourths of the jury shall render a verdict. Parties have the right to try their cases as they please. *Conventio vincit legem*. No one objects to that principle; and if parties choose to submit to a referee or to arbitrators or choose to submit to six jurymen or any number of jurymen, by their consent, they have a perfect right to do so; but the right of trial by jury has a distinctive meaning which no lawyer and no gentleman in this Convention can for a moment mistake. It is too ancient and too honorable an institution to be misunderstood. Trial by jury means a verdict of twelve men selected from the country for the purpose of trying causes. I do not suppose that a single gentleman upon this floor would for one moment pretend that in a criminal case any man should be condemned by less than a unanimous verdict of the jury.

Why, sir, should there be an exception in civil cases? I think when a plaintiff goes into court with his case, if he is not able to satisfy twelve men so as to obtain their unanimous verdict that he has a case, he ought to lose it; and if the affirmative of the issue is upon the defendant and he is not able to satisfy twelve men that he has a just defense, he ought to lose the case. To be sure there is the case of set-off in which is one against the other, where it does appear as though the defendant would have the advantage, but in civil causes the evidence is weighed, and a verdict may be given according to the weight of the evidence.

Sir, it is one of the safeguards of our liberties and of our rights of property that there should be a unanimous verdict. If you say that one-half of the jury or two-

thirds of the jury or three-fourths of the jury shall render a verdict, it is no longer trial by jury. You might as well, or much better, adopt the system that has been established in regard to grand juries: Select twenty-four men, put twenty-three of them in the box, and let them then hear the evidence, and if twelve agree upon a finding let it be taken; or provide a general system of arbitration and let the majority govern. But as long as we retain trial by jury, let it be trial by jury. I am one of those—and I believe that in that respect a minority only of lawyers in this Convention are with me—I am one of those few who have confidence in juries. I believe that in ninety-nine cases out of one hundred the verdict of the jury is right. I know that frequently, under the complicated points, under the hypothetical points that are submitted by counsel, and under the very learned charges of the judge, it might appear that the jury did not understand all the questions that were raised, and did not give a verdict according to the law; but if juries are chosen, as they ought to be, from the better men in the community, men of practical common sense, they will generally see through all the dust and rubbish that has been thrown around the case, will see the merits of it, and will find a verdict according to the merits of the case.

The CHAIRMAN. The Chair will remind the delegate that his time has expired.

Mr. LANDIS. I desire to propose an amendment to the substitute offered by the gentleman from Philadelphia (Mr. Newlin.) The latter part of the substitute reads as follows:

"In civil proceedings three-fourths of a jury may find a verdict after such length of deliberation as may be required by law."

I do not desire to say now how I may finally vote on this proposition; but I am very clear that the latter part of the amendment is entirely unnecessary. Therefore I move to strike out all after the word "verdict."

Mr. NEWLIN. Mr. Chairman—

Mr. ALRICKS. I rise to a question of order. Were there five gentlemen who objected to the gentleman from York (Mr. Gibson) continuing?

Mr. NEWLIN. I give way for the gentleman from York.

The CHAIRMAN. It is the duty of the Chair to enforce order. If any delegate rises to move to extend the time, the

question will be put on extending the time.

Mr. ALRICKS. I moved to extend the time of the delegate from York; but I suppose I was not heard by the Chair.

Mr. NEWLIN. I gave way to the gentleman from York.

The CHAIRMAN. The time of the delegate from York will be extended unless five delegates rise in their places and object.

Mr. CARTER ROSE.

The CHAIRMAN. The delegate from York will proceed as there are not five delegates rising.

Mr. GIBSON. Mr. Chairman: I am very much obliged to the committee for giving me this extension of time; but I do not know that I have anything further to add to what I have already said upon this section. Perhaps, if my time had not expired, I might have gone on with a few more observations on the general subject. Returning my thanks to the committee, I ask to be excused from further occupying the floor on that subject at present.

The CHAIRMAN. There is not proper order in the Hall. The Chair would remark that this section before the committee of the whole is one of great importance and should therefore receive the careful attention of delegates.

Mr. J. W. F. WHITE. I am well pleased with the remark just made by the Chairman of the committee of the whole. This is an important question. I am in sympathy with the gentleman from Philadelphia (Mr. Newlin) who has offered this amendment, but I must oppose it at this time and in the form in which it is presented; and I rise not for the purpose of discussing the question, but more for the purpose of suggesting to him that the right place to introduce it is when the report of the Committee on the Bill of Rights shall be under consideration.

The sixth section of the Bill of Rights says that "trial by jury shall be as heretofore and the rights remain inviolate." While that clause remains in the Bill of Rights, there can be no change whatever in our jury system; we are tied down irrevocably and indissolubly to the jury trial as it existed prior to 1790, with no power in the Legislature, and no power in the people of the State to change it even in its minor particulars. While that section of the Bill of Rights remains in our Constitution, and it has been reported by the Committee on the Declaration of

Rights just as it is found in the Constitution of 1838, and in the Constitution of 1790, the Legislature of the State, under the demands of the great body of the people of Pennsylvania, could never make any change in the jury system.

I am in favor of so modifying that section of the Bill of Rights that the Legislature, in obedience to the wishes and demands of the people of this State, if they should present such demands, may make some changes in our jury system in civil cases. I do not favor changing it as to criminal cases, but rather that the Legislature should have power to invest the courts with power to receive the verdict of less than twelve when the whole twelve cannot agree. I think this Convention should open the door for such a change as that. We all know that now, when the whole twelve cannot agree, the court has no power to receive a verdict even of eleven, but must discharge the jury. The case must go to another trial; and if on the second trial the jury shall again stand eleven to one, the court has no power to receive the verdict and it must all go over again. So you might have two or three or more juries standing eleven to one, and yet the court has no power to receive such a verdict, but must discharge each jury and subject the parties to continuances, to additional costs, to further trouble and vexation.

I wish, without discussing the subject further at present, to merely call the attention of the committee of the whole to that feature of jury trials in civil cases, where the Legislature has no power now to interfere. I go in for giving them power over the subject. But that will properly come up for consideration when we come to act upon the report of the Committee on the Declaration of rights.

I wish to say further, that I am opposed to legislating in the Constitution. I have taken that stand from the beginning of the sessions of this Convention. The proposition of the gentleman from Philadelphia is nothing but a piece of legislation, saying that three-fourths of a jury shall render a verdict. I am not in favor of putting that into the Constitution, even if I would vote for it in an act of Assembly; because putting it here, it becomes irrevocable, you cannot change it. And besides, let it be for the Legislature to say, if the people demand it, whether eight, nine, ten or eleven, or a majority of a jury shall give a verdict.

Apart from that, I would not give nine men of a jury of twelve, the absolute right to render a verdict. I would be opposed to a statute which would say that nine shall have an absolute right to render a verdict in all civil cases. I would only clothe the courts with power so that when the whole twelve men cannot agree, rather than discharge the jury and subject the parties to the delay and the costs and expenses of a new trial, the court may accept the verdict of that jury and let it be considered in arguing a motion for a new trial how the jury stood. Take the individual opinions of that jury and let them weigh in the consideration of the motion for a new trial. I repeat it, I would not give the right even to nine men absolutely to render a verdict, except when the courts choose to take, and then only when the whole twelve could not agree. The proposition before us, as I understand it, would give the nine men the absolute right to render a verdict.

Mr. NEWLIN. May I make a suggestion to the gentleman from Allegheny?

Mr. J. W. F. WHITE. Certainly.

Mr. NEWLIN. I think the gentleman is mistaken in his idea of this proposed amendment. The verdict of the nine would stand exactly as the ordinary verdict of twelve, subject to a motion for a new trial, or any other motion.

Mr. J. W. F. WHITE. The proposition is, as I understand it, that the nine may render a verdict, even without consulting the court. I would certainly oppose that, even in a statute. The furthest I would go is that when the jury cannot agree, the verdict of less than the whole number may be received by the court. I would object to this provision in a statute, because when the jury retire, there may be nine for one party and three for the other, and they would instantly render their verdict in favor of the party upon whose side were the nine. I would require that they should try to agree for a certain length of time, but if they cannot agree I would have them render a verdict to the court and let the court take it for what it is worth. This is the course now pursued in Scotland, and it has been suggested by Parliamentary Commissions of late years that it be introduced into England, where after a few years I think it will be adopted.

I trust the gentleman from Philadelphia who has offered this amendment will withdraw it for the present, because

I think it is out of place in this part of the Constitution.

Mr. NEWLIN. I will state that the reason why I presented this amendment in this connection was because the report of the Committee on the Judiciary contains this section, now under consideration. This section embraces the subject, and as we must act upon it and either vote it up or vote it down, I have introduced my amendment here.

Mr. J. W. F. WHITE. I do not think that this section, if it be adopted, will in the least interfere with the principle contained in the amendment of the gentleman being considered when the Bill of Rights come up for action. In that article I think we should open the door for the Legislature to carry out the principles of this amendment, now proposed to be inserted out of place. I think we had better here adopt the section as it comes from the Committee on the Judiciary. I am in favor of the section. I am in favor also of the principle the gentleman from Philadelphia announces, and when the report of the Committee on the Declaration of Rights comes to be acted upon, let us open the door there for the Legislature to make the proper change on this subject.

It was merely to suggest this that I desired to say a word or two on this subject.

Mr. BARTHOLOMEW. Mr. Chairman: This has been a question that has occupied my mind to a considerable extent. I have arrived at certain conclusions on this subject to which I adhere, and I propose to state them, briefly as I can, and assign them as the reasons for the vote which I shall cast on this question.

That vote shall be cast in favor of the amendment of the gentleman from Philadelphia (Mr. Newlin.) I know that we have a sacredness attached to many things in this world, and it looks like sacrilege to put a hand upon them. A man becomes a legal iconoclast who raises a hand against the established institutions through which the law has been administered by the race and by the people to which we belong. But there are also, and there have been, in this world many commonly received ideas of universal belief that have been just as fallacious as any thing on earth can be. For instance, what is there on earth that can be more clearly established than the existence of witches? We can prove that fact by Holy Writ. There we have the witch of

Endor. We have the statutes of every civilized land almost under God's sun, passed against witches and witchcraft. We have the records of the conviction of men and women for that offence, and we have their confessions upon the scaffold and at the stake, that they actually and in truth did commit the offenses with which they were charged and of which they stood guilty. Yet what intelligent man to-day in this broad world believes in the existence of witches? None, I take it.

Again, take the illustration of hydrophobia. Almost every town council and city council throughout this earth, wherever our people dwell, passes laws against dogs running at large and for muzzling dogs. They have dog-catchers, and they have cures, published in every paper that you see, for hydrophobia; and yet I undertake to say that there is no intelligent, reliable man who ever saw a case of hydrophobia, and that there is no eminent physician who will not say that there is no such thing on the face of the earth. These things are common superstitions that dwell in the minds of men, and that exist only because everybody believes in them. We are taught to believe in them; we are reared to believe in them; we are educated in them; it is part of our nature to believe in them, and yet they are errors.

Then let us come to the discussion and consideration of this question just as we would any other; not because of its peculiar sanctity; not because it has been denominated "the great palladium of our liberties;" not because it is something that stands above and beyond all other institutions, but let us rise up and reach out and discuss it as a question that is open for discussion. I undertake to say that at least one-half of the verdicts of juries in contested cases are rendered at a sacrifice of conscience on the part of somebody on the jury.

I do not propose to go back into the history or origin of juries, but desire only for one moment to look at their practical operations. We who have read know that it was a common custom to drag juries around the country, from one court to another, in carts, without food and without comfort. What for? To get the honest judgment of that jury? No; to coerce them and make them sacrifice their consciences. That was the object of it—not to get their real judgment, their honest convictions,

but to compel them to give a dishonest judgment and to decide against their convictions. That was the policy.

Now, let us take another proposition. I undertake to say that it is against the natural order of things that twelve men, with a set of facts submitted to them, should judge of the facts precisely alike. What lawyer in a court of justice trying a case against an opponent, a contested question of facts, with twelve of his fellow-members sitting, perhaps, within the bar, would have them agree with him? After the evidence has been submitted and the case argued to the jury, let the two lawyers who have tried the case go to their fellow-lawyers and ask their opinions upon the verdict, and I will venture to assert that there is not one case in a hundred where you will have twelve lawyers to give you a united and unanimous opinion as to how the verdict should be. It is not the order of thought. It is not the way men think. Facts present themselves in different aspects to different minds, because in the great wisdom of God's creation, showing its greatness and its grandeur, He has made the minds of men as dissimilar as He has made their forms and faces, no two alike on His whole foot-stool. Therefore facts present themselves to the minds of men in entirely different views with different results, and men form different conclusions from them. This being the natural order of thought of men and of mind, why will you in this case, and in no other, compel men of different minds to all think alike, and put upon them the same spectacles? It is in violation of every principle of mental formation, of mental action, of thought on every other subject that the mind takes hold of or grasps.

Now, I take it that the reasons for the introduction of the principle that there should be less than twelve, if you make a jury consist of twelve, to warrant a verdict, are manifest; and I take it that the principle in this amendment is not carried far enough. I would have it carried even into criminal cases, at least of misdemeanor. We have it illustrated everywhere. I have but to point to you a case that has occurred in the city of Philadelphia whilst this Convention has been in session. We had a case on trial in this city in which one man kept eleven men out for three long weeks, standing by his convictions, I suppose firm in his convictions, and keeping eleven men bound to him as with the grasp of death.



It is perhaps an easy matter to approach and to influence by undue means at least one man upon a jury, and thus you now prevent a verdict. We have had just such an illustration as that in New York. I speak of a man whose name has become notorious and common property when I refer to William M. Tweed, in the city of New York. He was prosecuted for misdemeanors, or for the purpose of making him disgorge that which he has stolen from the coffers of the city treasury; but that man, with his power and with his means to corrupt and his willingness to do, it can sit in your courts of justice and laugh at your laws. No law can touch him, no punishment can reach him, no recovery can make him take that from his pocket which he has dishonestly placed there, but he stands in open defiance of all your laws, simply because you have placed it in his power by reaching one man on the panel of twelve to defy justice and to trample it under his feet.

I take it, then, that in the practical operation of the courts, in their every-day life and every-day business, to require unanimity on the part of a jury is against the natural order of thought, it is against that which we should incorporate for the purity of the administration of justice. As long as this system holds, corruption is easy where there is a disposition to take advantage of it. It has naught in it except the sanctity of age. It has therefore that in it which necessarily makes it sacred to the legal mind and to the mind of an anglo-saxon people; but if there is error in it, if there is wrong in it, do not let us give to error and to wrong immortality. Let us strike at it if we believe it to be wrong. If we believe that it gives means whereby men may be cleared and relieved from their legal obligations, let us strike at it, examine it carefully and not bow our heads down simply because it has the dust of ages and that alone in its favor.

Mr. LEAR. Mr. Chairman: I am rather surprised to see so many gentlemen in whom I have confidence and on whose judgment I generally rely, in favor of this proposition of allowing a jury to render a verdict by three-fourths of their number; and the strongest reason they seem to give is that one or two or three men may prevent the rendering of a verdict and that therefore the expense and trouble of the trial, which may have occupied many days, has to be incurred again in another trial. That is of course an

evil, and all our systems are attended with evils. We cannot have any human institution which has not evil in it; but they have not called attention to the other evil which would arise if we had a jury rendering a verdict by a majority or by three-fourths of their number. Every lawyer who has been practicing his profession for a number of years, as I have, must know in his own experience, that his reliance in the trial of a case is upon three or four of the intelligent men of the jury; that he looks around upon the faces of the panel, and if he discovers that there is enough salt in that jury to save it from utter ignorance and from doing wrong to his client he is satisfied. But if you have this power in a majority of nine men to render a verdict then you would put it out of the power of those two or three men to save that jury from committing an error which would be irrevocable. The nine could ignore the presence of the three most intelligent men on the jury. There is where the great wrong would be.

Now, where they fail to agree, they simply go over their work again; but where they agree against the justice and against the facts of the case by nine rendering the verdict, casting out the weight and the benefit of the intelligence and the salvation of the sound judgment of the three substantial men upon the jury, that cannot be reviewed, and the party cannot be saved from the consequences!

I ask this committee of the whole to consider this matter and not to undertake to do a thing so radical as this without duly weighing the consequences. All the evils that gentlemen deprecate are apparent, because they are within their experience. The evils that will grow out of this new system proposed cannot, to be sure, be foreseen, but they may be well inferred from what we know of the value of three or four men.

But I rose to speak to this matter principally on account of a phase of the trial by jury in civil cases which does not seem to have been presented, and I do not desire to go into a history of jury trials, because it is not important in order that we should understand this question; but there is a class of cases in which juries must determine the whole question of amount of their verdicts. There are cases which may be submitted to the court, because the amount may be arranged by the parties; there may be no questions of damages to be assessed; and I refer now to

that class of cases in which a very great portion of the duty of the jury consists in ascertaining the amount of damages which they shall render. In that kind of a case, it is understood that the recklessness of some who care but little about how much the damages may be that are rendered will be checked and held in restraint by the discretion, the good sober sense, the even-mindedness and the intelligence of the two or three substantial men on the jury that will prevent them running riot in assessing excessive damages. These are cases above all others in which the duties of a jury are important, and in which the intelligent and thoughtful jurymen in the panel are more important than any other, and if we leave it to be carried by those who are thrown in to count, and not to deliberate, and who are merely numerically put upon the panel for the purpose of making up the twelve, and we give them the sole power of rendering verdicts and assessing damages according to their vague notions of justice, and without any substantial basis of common sense and propriety, we shall do an act which will be a wrong to the citizens of Pennsylvania, a wrong to the suitors, and especially a wrong to defendants in civil actions where the case sounds in damages. I hope, therefore, that this radicalism that seems to be rampant in this Convention will not go so far as to carry away that safety to the rights and the property of the people of Pennsylvania resulting from requiring a unanimous verdict of jurors in all civil cases.

Mr. NILES. I do not desire to discuss the question, but as the delegate from Schuylkill referred to the Tweed trial in New York, I will say that my recollection of that case is that the jury stood three for conviction and nine for acquittal; so that if the theory contended for by the delegate from Schuylkill had been adopted, William M. Tweed would have been acquitted and gone scot free.

Mr. BOYD. Mr. Chairman: There is nothing in this section that in any wise affects, alters or changes "Magna Charta," "trial by jury," "the palladium," "virtue, liberty and independence," the "*Vox Populi*" and the "*Vox Dei*," and all the other elements that enter into fourth of July orations; and therefore it seems to me that, whilst gentlemen appear to have had their jealousy excited with regard to the proposition which they conceive to be in this section, their apprehension was en-

tirely groundless, for this section in no wise interferes with them.

Mr. GIBSON. I should like to ask the delegate from Montgomery a question, with his permission.

Mr. BOYD. Certainly.

Mr. GIBSON. It is whether the amendment offered by the gentleman from Philadelphia does not directly raise the very question. It commences with trial by jury and ends in asking for a verdict of three-fourths.

Mr. BOYD. If it had not been for the decision of the Chair, I should have supposed that that amendment had no more to do with this section than the mover of it has to do with the kingdom on high, [laughter,] because there is nothing in this section that in any way interferes with trial by jury, and what an amendment has to do with this section which raises a question as to whether a jury shall be composed of twelve men or nine men or eight men, and what it has to do with William M. Tweed, of New York, is past my comprehension.

But as the Chair in its wisdom saw fit to entertain the proposition of the gentleman from Philadelphia, which was supposed by the majority of this body to be applicable to the Bill of Rights only, and as it came up for action, it was natural for gentlemen to discuss it under the ruling of the Chair.

Now a morning has been spent, if not wasted, in the discussion of questions that touch not this section. This section the Committee on the Judiciary believe to be an important one, and they are desirous that it should be adopted here. It does no more than to say that parties, by agreement filed, may, in any civil case, dispense with trial by jury and submit the decision of such case to the court having jurisdiction thereof. Now, if any two litigants are desirous of dispensing with the trouble and expense of a jury trial, with the trouble and expense attendant upon the appointment of a master in chancery, or an auditor examiner or commissioner, all of which tends to delay, all of which adds largely to the expenses of the litigants—wherever they are disposed to dispense with all that by agreement of both parties, why may not two litigants agree to what they please? And where they do agree that the court shall decide the facts and the law, why may they not do it? If two litigants under the advice of their counsel agree that the court shall hear and decide the evidence as well as

the law, why may they not do it? Observe that it is not in the power of either party to compel the other to submit questions of fact to a judge; but where they both agree to do it, this section says they may; and not only that, but that the judge shall decide the law as well as the facts.

It may be asked why an agreement of that kind cannot be made without this section. The difficulty is that the judge may not consent to decide the facts. He may say, "Oh, submit that to a jury," or "appoint a commissioner, appoint a master or an examiner;" that he is pressed with business; that he has no time to hear the facts. But now since we have, by a large and decisive vote, rearranged the judicial districts of this Commonwealth so that every considerable county in it will have a judge of its own, with plenty of time to do all this and their other work, and where there is not population enough to entitle a county to a judge, such as Centre and like small and unimportant counties, where they say the judge has not work enough to do, such as Washington, for example, he can very well employ his leisure time in hearing questions of fact that are submitted to him by agreement, and occupy himself in that way.

Where both parties agree, we say this may be done. I admit that if there are any members of this Convention who are mercenary and selfish, and who at the same time are pets of courts, and get the audits and are appointed examiners and masters, it would not be wise for such men to vote for this section, because it will take very largely from them perquisites. They will lose that patronage, because it is often the case that counsel are perfectly agreed to submit matters of fact to the decision of a judge, and as a matter of course, if the court is bound to decide these facts upon such an agreement, it will take that much patronage from those gentlemen who now have the court patronage.

It is difficult to comprehend what this question of jury trial has to do with this section, because as I have already said it must be by agreement of both parties that a question of fact is to be submitted to the court. What then? After this agreement has been made in writing and filed the judge is compelled to decide it and he files in the court, along with his findings of the facts, his decision on both the law and the facts; that is to say, his

finding upon the facts as well as upon the law is filed and made a part of the record of the court; and if either party is dissatisfied with his decision, then the party aggrieved may appeal to the Supreme Court as in cases of equity, that the judges there may review the facts as well as the law. Although the Supreme Court are not very apt to do that, and never do it unless in a very flagrant case where it is plainly pointed out that the court below have committed an error on the facts, yet they have the right by an appeal to have it brought before the Supreme Court and have the decision of that court both upon the facts and the law. Now, why should not parties bespared the expense incident to the common practice of referring all cases to a master?

Mr. HAZZARD. I rise to a point of order.

The CHAIRMAN. The delegate from Washington rises to a question of order which he will state.

Mr. HAZZARD. The gentleman from Montgomery is not speaking upon the question before the House, the amendment.

The CHAIRMAN. The point of order is not well taken. The delegate from Montgomery is making a very close speech to the question.

Mr. BOYD. Yes, sir, and a very convincing one, I trust. [Laughter.] I believe I have nothing more to say. My friend from Washington has scared me so that I have forgot the rest of my speech. In all seriousness, however, I trust the committee will adopt this section as reported, for the reason that it does not affect any of the questions that have been raised by the amendment of the delegate from Philadelphia.

Mr. CUYLER. I do not wish, Mr. Chairman, to detain the committee at this late hour and after so protracted a discussion by an elaborate argument upon the question before us; but only as a lawyer of somewhat large experience and one who loves his profession, to enter a solemn protest against the doctrine of this amendment. If there be any one thing, so far as my experience goes, in which the wisdom of our fathers has been more manifest than in anything else it is in the establishment of trial by jury and in the doctrine of requiring from juries unanimous verdicts; and my own experience endorses that doctrine fully and heartily. I ask the gentleman who introduced this amendment to point me to a solitary gentleman of the bar of

large experience here, or at any other bar, who advocates any such doctrine.

Mr. NEWLIN. The gentleman asks me to point out any lawyers of this or any other bar of large experience that have advocated such a change as this. I will say that a royal commission in 1830, composed of the leaders of the English bar, unanimously recommended just this change.

Mr. CUYLER. And the unanimous good sense of the English people spat upon it and trampled it out, and I know of no man in England to-day among the leaders of the British bar who advocates any such doctrine.

Mr. NEWLIN. Will the gentleman allow me to interrupt him again?

Mr. CUYLER. Certainly.

Mr. NEWLIN. The present Attorney General of England within a month or six weeks introduced into Parliament a bill for exactly this purpose; and he is the acknowledged leader, officially and in every other way, of the bar of England to-day.

Mr. CUYLER. The gentleman may be right in his statement of facts.

Mr. NEWLIN. I know I am right.

Mr. CUYLER. If he is, I am for the first time informed of it. I never heard of it before, and I do not believe his information on this point is correct.

I know there are gentlemen of large experience, like my friend from Schnylkill county, (Mr. Bartholomew,) who advocate such doctrines; but that gentleman placed the doctrine of the unanimous verdict of a jury alongside of witchcraft and wild delusions of various sorts in which he said our fathers believed, and treated it as if it were entitled to no other reverence and respect than those vagaries and errors, with which I have no sympathy at all.

Mr. BARTHOLOMEW. The gentleman does not exactly state my proposition. I simply mentioned that as an illustration. I did not compare it to either. I simply stated that a great many generally received convictions of the public mind often proved to be errors, and I illustrated by the instances that I gave as evidence of that fact.

Mr. CUYLER. The gentleman's explanation but repeats what I said just now. The profound respect that I have for him as a debater makes me sure that he intended his illustration to influence his argument and to operate upon the mind of the committee. He designed that the remarkable delusions to which he alluded

should stand side by side with trial by jury, and that the mind of the committee should be impressed with regard to the one precisely as it would be with regard to the other. If it did not mean that, it did not mean anything at all. It necessarily meant just that.

Now, sir, I have no faith, myself, in the decision of questions of fact by courts. I do not believe that men who live, in a large degree, a life secluded from the world, as we expect our judges to do, that men who live among books and among precedents, and who, by an impression which exists in the popular mind, are to be largely separated from that steady intercourse with the busy, stirring world about them, are healthy-minded judges of questions of fact; but I do believe that the men who are taken out of the mass of the community, the men whose minds have been molded in the hard and actual struggle of life, the men whose thoughts and modes of thought represent that which has been developed by the actual and constant struggle of life, are the healthy-minded judges of what the motives that influence men's conduct are, and of what the actions of men are to be regarded as being. Believing that the functions of court and jury are entirely distinct, and believing that juries are more healthy-minded judges in questions of fact than judges, I am not willing to consent that we shall write into our Constitution that parties may, by their own consent, confound those two functions and make the judge the judge both of the law and of the fact of the case. I would not give that consent. I would keep these two distinct offices of the judge and of the jury wide apart, just as our fathers have done, and I would not begin by breaking down that barrier and confusing those things with each other. Therefore, I am opposed, utterly opposed, for a single moment to arming parties with the power, if they choose, of putting upon a judge the functions that properly belong to a jury.

I have another reason. A large part of the strength of our courts of justice rests in the fact that they represent the popular element; that the mass of the people constitute a part of the judicial function; that they sit in the tribunal; that they take part in the decision of those questions that affect the rights of their fellow-citizens. This is the popular element in our courts; this is the strengthening element in our courts; this is the feeling that makes our people know and believe that

the action of the court is the action of the people and therefore they sympathize with it, gladly submit themselves to it, and faithfully execute its decisions. I feel that there is much in this doctrine. That is another reason why I would not break down this barrier.

I did not rise, sir, to discuss the question, because I did not believe it possible—I cannot be convinced—that among the gentlemen of this committee, combining as it does within itself so many lawyers of large experience and observation, that it could be necessary to make any argument for the purpose of defeating the proposition. I only rose as a lawyer, who loved his profession, to protest against any such radical change as is proposed in this amendment. I hope it may never become part of the constitutional law of Pennsylvania.

Mr. J. M. PURVIANCE. I desire, Mr. Chairman, to say but a very few words on this important question.

Under our present jury system each juror thinks and acts for himself, and feels the weight of personal responsibility. He cannot shift responsibility, and his oath binds his conscience to a personal and careful consideration of the facts of every case. If it be established law that a majority or two-thirds is sufficient to find a verdict, many jurors would become careless in keeping the facts fresh in their memory, relying upon their fellow-jurors for information after they retire to the jury room for consultation. As a general rule, the greater safety consists in adhering to the present system of trial by jury. Each juror feels the independence of his position and his right to carry it out, and you weaken and humiliate his position when you compel him to return with a verdict and have it rendered in open court, to which he appears to consent, when his judgment and intelligence are against the verdict as wrong and unjust.

Many centuries of experience in this country and England would seem to justify no change in our present mode of trial by jury. It is admired and honored by all the people of this Commonwealth, and no voice from any quarter has reached this Convention asking any change whatever. I shall vote against any change now and at any time hereafter that it may come before the Convention. My vote shall go to sustain the right of trial by jury as now established by our Constitution.

Mr. BOYD. I desire to offer an amendment at the suggestion of gentlemen around me, to insert after the word "appeal," in the fifth line, the words "or writ of error as in other cases," so that it will read: "The evidence taken and the law as declared shall be filed of record, with right of appeal or writ of error as in other cases."

The CHAIRMAN. The Chair will remind the delegate from Montgomery that there is an amendment to an amendment pending; otherwise the Chair would entertain the amendment.

Mr. BOYD. I beg pardon.

Mr. TURRELL. I desire to suggest to the committee that if we vote down the pending amendment and then adopt the first part of this section down to the word "same," in the fourth line, and add these simple words, "with the right of either party to take a writ of error as in other cases," we shall have all that is wanted on this subject.

Mr. CORSON. The right of appeal.

Mr. TURRELL. No, we do not want the word "appeal." The writ of error covers all that is necessary.

As to the pending amendment, I have simply to say that my mind has heretofore inclined in favor of that proposition, when it comes up at the proper time; but I am not in favor of putting it in this section. I agree with the gentleman from Allegheny (Mr. J. W. F. White) in his remarks on that subject, and I shall not proceed to argue it. But this section, amended in the shape that I propose, it seems to me will effect simply and properly all that we need at this time on this subject.

The CHAIRMAN. The question is on the amendment to the amendment.

Mr. NEWLIN. I ask for a count of the House. I do not think there is a quorum present.

The CHAIRMAN. A count of the House will be had to ascertain if there is a quorum present. [After a pause.] The Clerk reports that there are seventy-five delegates present.

Mr. NEWLIN. I ask for a division of the question on my amendment.

The CHAIRMAN. There is an amendment to an amendment pending, which is not susceptible of division, to strike out certain words.

Mr. NEWLIN. No, sir; the amendment I proposed was to strike out and insert, and it embodies two propositions.

The CHAIRMAN. The amendment offered by the delegate from Philadelphia (Mr. Newlin) is not before the committee. It is the amendment to the amendment, offered by the delegate from Blair (Mr. Landis.)

Mr. NEWLIN. I ask that it be read

The CLERK. The amendment to the amendment is to strike out the words, "after such length of deliberation as may be required by law."

Mr. LANDIS. In order that a vote may be taken on the entire substitute and the committee may not be embarrassed thereby, I will withdraw the amendment to the amendment.

Mr. NEWLIN. Now I call for a division of the question.

The CHAIRMAN. The reading of the amendment has been called for, and it will now be had.

The Clerk read as follows :

"The right of trial by jury shall remain inviolate, but may be waived by the parties in all civil proceedings; and the law and the facts shall be determined by the court, with the right of appeal in a manner to be prescribed by law. In civil proceedings three-fourths of a jury may find a verdict after such length of deliberation as may be required by law."

Mr. NEWLIN. Now I ask for a division of the question so that the first proposition may be voted upon separately, simply allowing parties to waive a jury trial.

Mr. MACVEAGH. Then, that the matter may be understood, those of us who are opposed to this section *in toto* at this time will vote "no" upon every division of the amendment, notwithstanding we might be in favor of that division under other circumstances.

Mr. NEWLIN. I have no doubt the House is very much obliged to the gentleman from Dauphin for his instructions how to vote.

The CHAIRMAN. The question is on the first division of the amendment, which will be read.

The CLERK read as follows :

"The right of trial by jury shall remain inviolate, but may be waived by the parties in all civil proceedings; and the law and the facts shall be determined by the court, with the right of appeal in a manner to be prescribed by law."

The CHAIRMAN. The question is on this division.

The division was rejected.

The CHAIRMAN. The second division naturally falls. The question recurs on the section.

Mr. BOYD. I move to amend the section by inserting after the words "right of appeal," the words "or writ of error as in other cases," so that it will read :

"The evidence taken and the law as declared shall be filed of record, with right of appeal or writ of error as in other cases."

And then strike out the residue of the section. The reason why I cannot accept the amendment of the gentleman from Susquehanna is this: I want "appeal" in because that is the mode by which we remove equity cases to the Supreme Court, and whilst they will not as a rule examine into the facts, yet if the court below should commit a flagrant error of fact and it can be pointed out to the Supreme Court, then they will review it and correct that erroneous finding of fact; but if you confine it to a writ of error, it is not so clear that you can get the court to review the case when it comes up by appeal. I hope that the committee will sustain my amendment. I have studied this thing, and I understand it perfectly. It will then read :

"The evidence taken and the law as declared shall be filed of record, with right of appeal or writ of error as in other cases."

The CHAIRMAN. The question is on the amendment of the delegate from Montgomery.

Mr. ALBRICKS. Mr. Chairman: I hope the House will vote down the amendment and then vote down the section. I should regret very much if we imposed the duty on the court to decide questions of fact. And they are not as well qualified as a jury of the country is to dispose of these questions. At least such has been my experience.

Mr. HUNSICKER. It is only by agreement.

Mr. ALBRICKS. It should not be put in the power of the parties to say to the court, "you shall decide these disputed facts; we will submit them to the court." I apprehend that that is without the province of the court, and they cannot do it with that exactness and correctness that the facts could be ascertained by a jury.

I remember, Mr. Chairman, trying a case in our court in which the claim was for some \$800 or \$900 for damages for extra work done. It was the case of *Carnecross and Quigley vs. The Pennsylv-*

vania railroad company. I remember that the court, in charging the jury, told them that it was a trumped up claim, and more than the plaintiffs were entitled to recover for all the work under contract; and the jury went out, and misled by the charge of the court found a verdict for the defendant. When they came in, I was too indignant to ask the court for a new trial, but I called his honor's attention to the fact that he had misled the jury and that he had it upon his own notes that the plaintiff had received \$15,000 under the contract entirely, that that was in evidence. He turned to the evidence and found it so, and when I asked a "gentleman of the jury, how did you find such a verdict?" "Why," said he, "did not the court tell us it was a trumped up claim, and that the plaintiffs claimed more for extra work done than they were entitled to under the whole contract, and how could we do otherwise?" I took that case to the Supreme Court, and the judge who was then on the bench of the Supreme Court, (who is now present, Mr. Ch. J. Black,) told me that I must not come there to have the errors of the court below on questions of fact corrected, and we lost the cause.

I understand that such will be the case if you undertake to submit questions of fact to the court for their decision. When the parties agree upon a case stated, the court have nothing to but to pronounce the law, and then you are safe; then you are in no danger. But I tell the gentlemen of this committee that the unwritten wisdom of the world is more than all the books in all the libraries. It is the experience which the juryman who is acquainted and familiar with the common affairs of life carries into the jury box, that enables him to decide correctly.

Mr. Chairman, I believe the security of our institutions is in having "a committee of twelve honest men from the county" to watch the court, and therefore I trust you will impose no new duties upon the court, but that we shall leave it as it is now. If the parties agree on the questions of fact and ask the court merely to pronounce what is the law upon that statement of facts, let the court do so. Therefore I hope the amendment and the entire section will be voted down.

Mr. DARLINGTON. Mr. Chairman: Every gentleman, I suppose, is aware or should be aware that, as the law now stands, there is nothing in the way of parties submitting a question of law and fact

to the decision of the judge if the judge is willing to accept the trust; and every gentleman is or ought to be aware that the decision of law and fact by the judge so circumstanced, the case being submitted to him by agreement of the parties, is conclusive upon the parties just as a reference at common law. Now, ought we to go further and compel a judge to take cognizance of questions of fact? Have gentlemen duly considered what will be the effect upon the judicial character by imposing upon them these duties? Is there anything in the imagination of members of this committee which could more certainly impair the confidence which the community should have in the integrity and firmness of the judges, than this? Let your judge be compelled to decide questions of fact between man and man, and every decision he renders makes him an enemy, and directly you have him hated and despised by one-half the community for his decisions—honest decisions—upon questions of fact, which may be unsatisfactory to suitors. Would not that be the necessary effect of it—to degrade the judge in his own opinion and in the opinion of the people?

I would not do this while you can summon a jury and leave to them the decision of questions of fact. When they disperse to their homes let the suitors be made to understand that each one of the twelve is not responsible for the decision, and that they have no one to blame but the weakness of the cause; and although it may be in some cases that a mistaken verdict is given, that is not to condemn the system. Human judgment is imperfect. You cannot in all cases arrive at mathematical certainty in the decision of causes; but look at the vast results over the country. Everybody is satisfied in general with the administration of justice as we have it. Why should we leave that system and adopt some other and untried scheme? I think it would be of very doubtful propriety indeed to compel a judge to decide questions of fact. True, it is said that in matters of equity the judge does virtually decide facts; but how? The facts are examined and reported by a master with his judgment, and the judge is bound to review that report, but what is the effect? He gives it the effect of a verdict of a jury. Just so in the orphans' court, the decision of an auditor has the effect of a verdict of a jury; that is to say, the court will not set it aside unless he is satisfied that a griev-

ous error has been committed; if he is of opinion that a jury might safely have decided that fact one way or the other, that a man of the mind of the auditor to whom it was submitted might well have come to one or the other conclusion, he will not disturb it. It has the effect of the finding of a jury and never is set aside unless the judge is satisfied that some gross error has occurred.

No wrong follows from this. Justice is administered as it ought to be, with entire satisfaction to the community, in equity cases and in orphans' court cases under that system. So it is equally well administered by courts and juries in all common law cases in the common law forms. Why change? Above all, why give an appeal the Supreme Court? I would never put that court to the necessity of reviewing questions of fact where the parties have submitted it to a referee. Even if you were to give the judge the power and compel him to exercise it, I should strike out all about an appeal, so that the suitor should have the choice of his common law remedy and trial by jury, or, if he prefers to take it, the binding and conclusive decision of a judge on matters of law and fact. These are my views of it. I go with the gentleman from Dauphin (Mr. Alricks) for negating the whole scheme.

Mr. BROOMALL. I am surprised that so much has been said upon a section that seems to be at least introducing a harmless system, if even that much can be said against it. The change that is proposed is simply to allow the parties, where they choose to submit the whole question to the court, to dispense with trial by jury. That is all; and I should like to know why the parties should not have that privilege. I have very little idea that it would apply to many cases, but there are cases involving very few facts, where the expense and delay of a trial by jury may be avoided by just this simple arrangement that it seems to me can hurt nobody. I agree with my colleague that at present we can submit a case by agreement to the court, but we cannot take up any error of law that the judge may make by writ of error. We want that chance. The reason we do not now leave many questions to the decision of the court is because we are not willing to trust him with the ultimate decision of the law.

Besides, judges like to have juries take the responsibility of deciding the facts, which is all well enough, but if the parties

want the judge to decide the facts instead of a jury, why should they not be allowed to have it done? It is the business of the court to determine the causes between the parties, and I do not see why we should ask its consent. We do not ask its consent to the decision of questions of law; why ought we in the decision of questions of fact? I repeat again, I see no reason why the parties to a cause, who are the only people interested, should not agree for convenience and for haste, to avoid delay, to leave the whole question to the decision of the court. I am, therefore, in favor of the proposition.

Mr. BIDDLE. If the parties to a controversy choose to leave the determination of the facts to the court instead of the jury, I suppose they are entitled to do it, and I have no objection to letting them do it. I think it is a mistake myself, but if others prefer it, let them have it.

There is one feature in this section which I do decidedly object to. You say in effect by adopting the section, that you prefer the judgment of a court to the judgment of a jury upon the disputed facts. So be it. Then you immediately counteract the effect of that assertion by saying, after the forum chosen by you to determine the facts has settled them, you are not satisfied with his determination and want an appeal to the Supreme Court. I do decidedly object to that. If you want the court to try your disputed facts, so be it; I think it a mistake; but do not carry up the whole evidence by way of appeal to another court to try again that which you yourselves, by your own choice, have imposed upon a forum different from the ordinary forum. I would certainly limit it to a writ of error and strike out all about an appeal. If it is in order, I move to strike out "right of appeal or" before the words "writ of error."

The CHAIRMAN. That is in order as an amendment to the amendment.

Mr. BIDDLE. I shall vote against the whole section because I think it wrong; but as it may carry, I want to see it in as perfect a shape as possible. I suppose there will be no objection to striking out "or appeal." Just see what it would lead to.

Mr. CORBETT. Will the gentleman allow me to suggest that a motion is made merely to amend, and that amendment is pending, as I understand, to insert "writ of error?"

Mr. BIDDLE. No; the section has in both "appeal" and "writ of error."



The CHAIRMAN. The Chair will state that the gentleman from Montgomery (Mr. Boyd) moved to amend, and the delegate from Philadelphia (Mr. Biddle) moves to strike out part of the amendment of the delegate from Montgomery.

Mr. BIDDLE. The amendment of the gentleman from Montgomery has both "appeal" and "writ of error" in. I want to strike out "appeal."

Mr. BOYD. I stated before the reasons why I insisted upon the word "appeal" remaining in, so that it would cover cases in equity and all other cases.

Mr. BIDDLE. Cases in equity are provided for separately. That is a different subject entirely.

Mr. BOYD. Very well, I will agree to strike out "appeal." I accept that modification.

The CHAIRMAN. The delegate from Montgomery accepts the modification of the delegate from Philadelphia as part of his amendment.

Mr. BIDDLE. Very well.

The CHAIRMAN. The amendment will now be read so that the committee may understand it.

The CLERK read as follows:

"The evidence taken and the law as declared shall be filed of record, with the right to a writ of error, as in other cases."

Mr. BROOMALL. I ask the gentleman from Montgomery to substitute this amendment prepared by the gentleman from Allegheny (Mr. S. A. Purviance) for his; I will read it:

"The parties, by agreement filed, may in any civil case dispense with the trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the final judgment therein shall be subject to writ of error, as in other cases."

Mr. BOYD. Certainly; that will do; I think it is better, perhaps.

The CHAIRMAN. The delegate from Montgomery withdraws his amendment. The delegate from Delaware moves to strike out and insert. The amendment will be read from the desk.

The CLERK. The amendment is to strike out the whole section and insert:

"The parties, by agreement filed, may in any civil case dispense with the trial by jury and submit the decision of such case to the court having jurisdiction thereof; and such court shall hear and determine the same; and the final judgment therein

shall be subject to writ of error as in other cases."

The CHAIRMAN. The question is on the amendment just read.

Mr. WHERRY. Mr. Chairman: I desire to understand the effect of this proposition now before the committee. If I do understand it it differs from the acts of Assembly just in this: That the acts of Assembly allow parties to refer to the decision of the court questions of fact with the consent of the court, and this imposes on the court the duty of hearing the facts and deciding them where the parties desire it. Now the nub of it all is, shall we impose on the courts this duty? I am opposed to that.

Mr. CLARK. Mr. Chairman: I am opposed to this section. We have heretofore practiced in Pennsylvania under a system which provides one tribunal for the facts and another for the law in every case. The jurisdiction of these different tribunals is distinct and well defined, and the one forms a check upon the other. The court pronounces the law and the jury determines the facts. The court may err in the performance of its duty, but that error can be corrected on appeal or writ of error. If the jury is at fault, however, the court only can correct their mistake. Every case is tried by a new jury, and that jury carries away with it all the feeling engendered by the trial, leaving the court unaffected by it. The odium resulting from the determination of any cause arises out of the facts, and not the law, as that is open to review in a higher court.

In the trial of causes, when the controversy becomes heated, the zeal of counsel enlisted and local feeling excited, members of the bar and others are wont to pour out the vials of their wrath consequent upon defeat on the heads of the jurors. I presume no lawyer now occupying a seat on this floor ever did so foolish and vain a thing as this, but I know that I have heard epithets and terms used with reference to jurors, that I hope may never be used when referring to the judge upon the bench. Perhaps, in some instances, there may have been some cause for these severe reflections, but usually they are the result of suspicion and over wrought zeal on part of counsel. Jurors are sometimes, I know, controlled by popular clamor, private or personal solicitation of persons outside the court, by private interest, and perhaps in rare cases, by actual corruption, but in all such cases the court is a check upon their action, and

to prevent actual injustice and fraud will in all such cases interfere, and allow a new trial before another jury. All men when disinterested and sitting in judgment between other men, are inclined to be honest. Corruption has made much more headway in other departments of the government than in the jury-box. This is especially true in the country, and I believe it is also, in great part, true in the cities. Jurors, too, are usually taken from that class of practical men who are conversant with men and things to a sufficient extent to qualify them for a proper discharge of their duty in the box. All men I say have honest instincts, and I think the experience of the last century does not yet establish the proposition that trial by jury is a failure. Let us preserve the old and well-tried plan of trying the facts before a jury and submitting the law to a distinct tribunal.

This is a good practice which we have lived under these many years, and I know of no popular demand for a change of the system. I am sure I never heard such a change suggested until I came into this Convention.

Now let us look at this proposed change in a plain and practical way, and see if it is probable such a measure would serve any good practical purpose.

I have said that lawyers and others, in a certain class of causes are disposed to reflect and actually do reflect upon jurors. Will they not in all such causes reflect also upon the court, if we put upon the court the duty to pass upon the facts and use the same character of epithets in reference to them, which they are accustomed to apply to jurors. What is the effect of this. Some members of the bar, when they lose two or three causes by the ruling of the same judge, will incline to the belief that the action of the judge is the result of some personal feeling; he will therefore thereafter refuse to submit his causes to that method of trial; then suspicion sets in on the side of the court until in time a feeling of actual animosity between the attorney and the court is the result. I say this is the tendency of this system of practice. I ask any candid and conscientious man whether this is not the tendency of such a system?

I can imagine myself now in court about to try an important cause against my learned colleague, the Chairman of the committee (Mr. White,) with whom I

frequently have the pleasure to try causes in my own county. He may have a better opinion of the court than I, and therefore may prefer to try the cause, before that tribunal; or he may, for the purposes of effect with the court or the jury, feign a desire to try the case before the court; he therefore very mildly suggests in the hearing of the court and jury, that he prefers to try the cause before the court; that a jury is not required, and the court is much the best tribunal to settle the questions involved, and requests my assent to the proposition. If I object to such a method of trial it is the occasion of some bitterness between the court and myself. The judge supposes of course that I would not have objected to a trial before him if I had a proper appreciation of his honesty and integrity, or, perhaps, of his judgment. This system of bantering and badgering will be an everyday scene in our courts of justice, and the demoralizing effect of it is obvious and apparent. The judge is placed in an exceedingly embarrassing place by a refusal, and the attorney, feeling the sense of embarrassment to the court, may be induced to yield an assent, and this is an awkward position for him to fill if he feels that he is jeopardizing his client's cause. But suppose I am induced to consent to a trial before the court—dispensing with the jury—under the circumstances I have referred to, the cause is tried and I am unsuccessful. I feel that I have been beaten unfairly. I was forced to yield to that form of trial or bring down upon me the frown of the court, and I am ready, perhaps, to attribute my defeat to the personal ill-will of the court, either to me or to my client. Thus the close and intimate intercourse and kindly feeling existing between the members of the bar and the court is interfered with and that implicit confidence and high grade of honor which the bar should always concede to the bench, is in great measure destroyed. No other cause has so contributed in the past to dignify the bench and elevate the profession as that high and honorable sentiment of respect which the members of the bar have hitherto always entertained to the judge upon the bench, and no other circumstance has rendered the practice of the profession so agreeable and pleasant as the graceful return in courtesy and respectful consideration which the judges upon our common pleas benches have made to the profession, in the ordinary and regular practice.

I submit to the gentlemen of the committee that it is certainly better to have one tribunal for the law and another tribunal to determine the facts in every case, and thus prevent every occasion for the difficulties referred to. This is a plan which the experiences of a century justifies and approves.

In the trial of causes, offers are very frequently made to prove some fact or circumstances which is regarded by the adversary party as improper and inadmissible. One of the great conveniences and advantages of our present system is that we may have the offer reduced to writing and submitted privately to the court, that it may be examined, and if improper it may be ruled out, and thus the tribunal to pass upon the facts are not prejudiced by the improper offer. Oftentimes an offer is made with this design, but our practice enables this design to be defeated. If the facts are all to be submitted to and tried by the court, the offer must be made to the court, and ruled by them, and the benefits of the present system is lost. This destroys the symmetry of our present plan and I think greatly impairs its efficiency.

MR. BOYD. Will the gentleman allow me to ask him a question?

MR. CLARK. Certainly.

MR. BOYD. Do I understand the gentleman to say that two capable lawyers would ever agree to submit a question of fact to a judge, when they know it is going to interfere with the symmetry of the administration of justice? If so, why do they agree to it?

MR. CLARK. The party is induced to consent for the reasons and under the circumstances I have already referred to. He may yield his assent rather than have any impression upon the mind of the court that he was unwilling to trust the case to that tribunal.

Besides all this, I regard this proposed change as degrading the character of the court—exposing it to the criticisms and complaints of every one who may have occasion to appear before it as a party litigant. The duties sought to be imposed are distasteful and onerous, adding greatly to the already cumbersome duties of the office. It would make the office less desirable, perhaps less honorable.

I can see no good to be accomplished by this change, whilst, I think I can discover many evils which it will certainly bring about.

But it is argued by those who favor this change that we do now submit questions of fact to our courts in all equity cases. We first submit all questions of fact in equity cases to a master; he finds the facts in form; in this respect he supplies the place of a jury; he carries all the odium of the determination of the facts for this reason, which is as applicable to a master as to a jury. His finding has great weight in the argument before the court. Indeed, unless some serious blunder or grievous error is discovered, the court will not interfere with his finding of the facts. He examined the witnesses; he heard them testify; saw their manner; observed their bearing under cross-examination, and the court will in no case set aside his finding unless an obvious blunder is found. For the same reason the court would set aside the verdict of a jury. In fact, therefore, the facts in equity cases are not submitted to the court; they are submitted to the master, and the court exercises a supervision over his finding as they do in any case of trial by a jury.

It may be said, however, that it is only proposed to try such cases before the court as the parties may agree to try in that way. I understand this to be the character of the proposed section. I admit, too, that parties would have the right, as far as they are concerned, to submit their disputes to such tribunal as they may themselves choose, but I object to the duties which they impose upon the court. The court could not refuse, if the parties agreed to submit the cause, and this is what I object to, and upon the two grounds of objection already stated: First, because of the suspicions and coldness which it tends to create between the bar and the bench, and the ultimate destruction of that high sentiment of respect and esteem which the bar uniformly pays to the bench, and second on account of the onerous and disagreeable duties it imposes upon the court. Let us preserve our present system. Let us preserve the right of trial by jury inviolate, allow the jury, as heretofore, to bear the odium of the trial away from the court and preserve the dignity of the court against all reproach.

It is proposed in this section, reported by the Committee on the Judiciary, to carry all cases tried under this proposed new plan to the Supreme Court by appeal, equity cases are now reviewed. Let us examine what labor this necessarily imposes upon the court. If such proceedings are removed by appeal to the Supreme

Court, as equity cases are removed to that court, we impose upon the court the labor of a master. The court must necessarily find all the facts in form, write them out as part of the finding with logical and legal accuracy, in order that the Supreme Court in reviewing the case may discover what error, if any, existed in the application of the law controlling the case. The law is always dependent upon the facts, and the facts must necessarily be found to base the opinion of the court upon them; you will compel the court not only to find the facts, but to reduce them to writing at length, for the benefit of the Supreme Court. This will impose a heavy burden upon the judges of our courts. If the method of review is ther assimilated to cases in equity, I presume this finding of facts will be subject to exception in the Supreme Court; indeed it should be. It follows, therefore, that the Supreme Court must wade through the volume of facts of each case, upon exceptions filed, to discover whether a blunder has been committed in this branch of the case, and thus, too, the judges of that court will be embarrassed by this course of proceeding, and their already too onerous duties largely increased.

But the amendment of the gentleman from Delaware (Mr. Broomall) proposes to strike out the word "appeal" and insert "writ of error," and this seems to reconcile the distinguished and learned gentleman from Philadelphia (Mr. Bidle) to this section. Suppose this change is made in the section, and causes tried under its provisions are removed to the Supreme Court by writ of error instead of appeal, what then? We now have a system by which every litigant can have upon the facts of his cause the judgment of twelve of his peers; and in case of any improper action on their part, or if the jurors are unduly influenced by popular clamor, private solicitation or personal interest, the court, a tribunal differently constituted, forms a check upon their action and will order a new trial. If you adopt the suggestion of the gentleman from Delaware (Mr. Broomall) you confine the question of fact to a single tribunal—small in number—perhaps consisting of a single person, a person too who inherits all the frailties of human nature, susceptible to prejudice, accessible perhaps by private solicitation, controlled to some extent by private or personal considerations, and in some cases perhaps corruptible and venal in charac-

ter; a tribunal, too, which is known to be a constant one, not subject to change. To this tribunal thus constituted you would submit your questions of fact without opportunity of review or control. Whilst a jury, fortuitously chosen, (precluding in great measure opportunities for corrupt or improper previous approaches,) selected from the masses of the people, with full opportunity of challenges, &c., is to be discarded. Mr. Chairman, I regard this course of procedure as an absurdity, and I hope it will receive no favor from the committee of the whole. Let us stand by our ancient land-marks, which experiences have shown to be the true ones.

Do not let us insert into the Constitution a provision which we may hereafter regret. If we put it into the Constitution, we can not in case of its proving unsatisfactory to the profession or to the court, get rid of it. It is purely experimental, and we should put no merely experimental things into the fundamental law. If this proposed change is a good one the Legislature can provide for it. There is nothing either in the Declaration of Rights or elsewhere, in the old Constitution or in the one we are now attempting to frame, which forbids litigant parties from waiving a trial by jury in a civil cause and selecting what tribunal they please, but do not let us impose it upon the courts as a duty to try questions of fact in cases at law.

The CHAIRMAN. The question is on the amendment of the delegate from Delaware (Mr. Broomall) to strike out and insert.

The amendment was agreed to, there being on a division ayes forty; noes, thirty-seven.

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

The section was rejected; there being, on a division, ayes thirty-three; less than a majority of a quorum.

Mr. DALLAS. I offer the following as a new section, to come in at this point:

"Each of the courts of Philadelphia shall appoint a phonographic reporter and fix his salary. Said reporters shall be sworn officers of the court and their reports of the evidence and of the charge of the court shall in every case be conclusive upon the judge and the parties. ["No!" "No!"]

[Several Members. "Let the committee rise."]

Mr. DALLAS. I give way only for the purpose of a motion that the committee rise.

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.

The President *pro tempore* 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. J. M. BAILEY. I move that the Convention take a recess until three o'clock.

The motion was agreed to; and (at one o'clock and two 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 JUDICIAL SYSTEM.

Mr. LILLY. I move that we go into committee of the whole for the further consideration of the article on the judiciary.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Harry White in the chair.

The CHAIRMAN. When the committee rose this morning they had under consideration the amendment in the shape of a new section offered by the delegate from Philadelphia, (Mr. Dallas,) which has been read.

["Question!" "Question!"]

Mr. DALLAS. Mr. Chairman: I am very well aware of the objections to the section which I have had the honor to propose. Those objections are two fold; first, that the section is legislative in its character; second, that in its application it is limited to the city of Philadelphia. Both of those objections I propose very briefly to consider before calling the attention of the committee to the importance of the subject, and the necessity for the provision.

The first objection suggested is that the section proposed is legislative in its character. To a great many propositions heretofore presented for adoption, the same

reason for their rejection has been interposed, and with equal force; but gentlemen who have urged that objection to sections that did not meet their approval, upon other grounds have, we have constantly found, been quite willing to revive it, as to sections that they considered otherwise worthy of their favor. We have, by this article, provided very carefully for the constitution and organization of the courts, so far as the judges and even the prothonotaries and other minor officials are concerned; and by the section which is now under consideration it is proposed merely to create an additional officer, and upon the question of whether this may properly be done by Constitutional provision, permit me to say that I am unable to perceive any objection to it that would not equally apply to the section by which we have provided for the selection and removal of prothonotaries. In my humble judgment a phonographic reporter is but little less necessary to the courts of Philadelphia than is a prothonotary.

We once had official short-hand reporters for the courts of Philadelphia county. They did their work well and to the universal satisfaction of the bar; and they very materially advanced and speeded the proper conduct of the business of the courts. They were given to us by an act of the Legislature; but, sir, one day the members of our bar appeared in the several courts for the trial of cases, and the inquiry was made, "what has become of our official reporter; where has he gone," and the answer was, "the act has been repealed." "Why, has the act been repealed?" was the next question, and then they were told and I suppose truly, for I have never heard it denied that the prothonotary of the court who by law was entitled to receive two dollars every time a case was placed upon the trial list, had secured the repeal of the act, because under it provisions parties were required to pay for the compensation of the official reporters some small sum, when they ordered their cases upon the calendar, and, in consequence, fewer cases were put upon the list, and the prothonotary's fees were reduced.

Thus we lost one of the most important officers of our courts, and my desire is, by this section, to now make the indeed necessary office of reporter a constitutional one, as we have already made the office of prothonotary; and in doing so we will go no further in the direction of legisla-

tion than we have constantly gone heretofore, nor one step further than it is absolutely requisite we should go, if we intend our Constitution to complete the organization of our courts of justice.

It is true that I have confined this section in its operation to the city of Philadelphia alone. My reason for that is that I cannot undertake to speak for the bar or the people of any other part of this Commonwealth on such a subject as this; but if any other gentleman representing any other portion of the State thinks that the same provision should be applied to the courts of his district, I certainly have no objection to having it extended to meet his wishes. But it is impossible that other judicial districts, with their smaller populations and less litigation, should have the same necessity for the proposed officer that the city of Philadelphia has, or that this city can confine its needs to the measure of the wants of the purely rural sections of the State. It is not fair; it is not just that she should be asked to do so.

Why, sir, we have now in the city of Philadelphia ten judges, and we have still upon the trial list of our several courts twenty-five cases per day for trial, and many of them of the utmost importance. This statement alone must satisfy all fair minds upon this head.

I understand that it is the almost universal practice throughout the State, outside of this city, to take the notes of the judge as the actual bill of exceptions in all cases. His bill is sealed in each instance as the occasion arises, and when the trial is over, he can hand from the desk at which he sits the complete bill of exceptions ready for the Supreme Court. That is not the case here. Under our rules of practice, we have ten days in which to present our bill of exceptions. We have then twenty days to settle it. In no case has the judge complete notes of the evidence, and in but few cases a full report even of his own charge to the jury; so that when we come to prepare our bill of exceptions for the Supreme Court we have frequently a contest between counsel in determining what was actually done and said upon the trial. They have only their notes taken upon one side and the other, in the hurry of trial, and when they meet to settle the bill it is always, even between the fairest practitioners, a very difficult matter to agree upon anything. Then their work is taken to the judge, who reviews it, and

if he considers it unfair to him in any particulars, finally alters it to suit his views; and that miserable, garbled, unsatisfactory and often far from correct history of what occurred upon the trial below is all that goes to the Supreme Court, which consequently frequently decides a case very different from that which has been really tried in the lower courts.

Now, sir, this is necessarily so, for notwithstanding that we have ten judges for this city, unless cases are tried hurriedly, our courts never could get through their business. With twenty-five cases set down for trial every day, before each judge who happens to be sitting for jury trials, we must hurry. The judge urges; the room is crowded; a long list is waiting; counsel are of course nervous, and under such circumstances, we must take notes faster than, under any circumstances, we could write, and try our causes at the same time. No counsel has time to take down, word for word, what witnesses say; and the judge, without writing his charge, delivers it to the jury as fast as an ordinary man can speak; and not in one case in a hundred does there go from Philadelphia to the Supreme Court more than a portion of the evidence, and a fraction of the charge to the jury.

These are the reasons for the special application of this section to the city of Philadelphia; and I do not believe that those delegates who do not live in this city will be unwilling to do justice to the metropolis of their own State, merely because she asks for something which is not required elsewhere.

But, sir, advantage to the State at large would result from this section. Fifty judges for the city of Philadelphia could not give our business the same deliberate consideration which yours in the country receives, without the aid which this section would give; but let us have this means of lightening the labors of our courts, give us this means of expediting our business, and the Commonwealth will receive the benefit of it in the saving of increased judicial force which otherwise we will find it necessary continually to ask for. In addition to that it would aid in the relief of the Supreme Court. Enable us to present to the judges, upon our paper-books, in every case a correct statement from the hands of a competent short-hand reporter, such as we have in this body, of exactly what occurred upon the trial, and you will save them all the time and labor that

they expend in floundering through the stuff now submitted to them. These are some of the reasons that induce us to ask for phonographic reporters for the courts of the city of Philadelphia. We know that they are greatly needed here, and we believe that by giving them to us, you would best serve the entire State, and no good ground can be assigned for refusing to let us have them.

Mr. CUYLER. May I say a word in support of the proposition of my colleague from Philadelphia? I can hardly suppose that it is necessary in this Convention to argue in favor of phonographic reporting. We have given an illustration of our own convictions on that subject. Every word that we utter is reported and printed; whether wisely or not, I do not know; but still it is so; and I see in that an illustration of the conviction of the Convention on that subject.

Now, the two things that we need in a county like Philadelphia, with reference to our courts, is economy of time and accuracy of statement. With the vast business that presses upon the courts of the city of Philadelphia, to be able to shorten the time devoted to each trial must be a thing of cardinal importance. There is no method by which that can be done so successfully as by phonographic reporting.

Besides all that, it carries with it the merit of absolute accuracy. It is a very photograph of what actually takes place on the trial of a cause; so that by this process and at an expense comparatively insignificant, absolute economy of time and precise accuracy of reporting are secured in every case tried in court.

I should suppose that to state these facts would be to state sufficient to sustain the amendment which my colleague from Philadelphia has offered. In all very important cases in this county it is the practice of counsel to employ phonographic reporters at the expense of the parties, which is of itself an unreasonable thing, and then it does not carry with it the weight that it would have if done under positive authority, as it would be by such a proposition as is made here. The experience of the bar and the experience of this Convention, nay, our very common sense, therefore, seems to me to show that this amendment is one that ought to prevail.

Mr. HAY. I should like to ask the gentleman this question: Whether it is intended by this amendment to give to the

reports of the official reporters the same force and effect that is now given to the notes of the judge?

Mr. CUYLER. I would be very glad to see that the case. I may say that in the courts of New York this system has prevailed for several years past. The notes of the reporter are made the official record of what actually takes place; and the expediting of business as a practical result in the New York courts is something very impressive to a lawyer from a distance who has occasion to go there.

Mr. BOYD. I move that Montgomery county be added. If the city is to be benefited by it, I should like to benefit Montgomery county also.

Mr. DALLAS. If that is the general desire of the delegates from Montgomery, I will accept the amendment.

The CHAIRMAN. The amendment would be in order, although it is an awkward expression to put in the Constitution. If the delegate insists on it, the question will be taken.

Mr. ROSS. I should like to ask the gentleman to amend his amendment so as to read "the seventh judicial district."

Mr. BOYD. I accept the amendment.

The CHAIRMAN. The amendment will be modified so as to include "the seventh judicial district," instead of "Montgomery county."

Mr. CORBETT. I hope this additional section with the amendment will not pass. It is a matter purely of legislation, and if it is right it ought to be applied to the whole State. Since we have given to the city of Philadelphia special provisions with reference to police judges, and also with reference to the prothonotary, and it appears that it was his interference that procured the repeal of the law authorizing these phonographic reporters, I apprehend all cause for his interference will be removed, and that the courts and the bar, if they apply to the Legislature, will obtain relief from the Legislature. I think, Mr. Chairman, the city of Philadelphia ought certainly, under all the special legislation that we have done, now be able to take care of herself. She has surely come to years of maturity, and if she has not, if she is still wrapped in swaddling clothes, I hope we have furnished her enough, and if she needs any more she will furnish herself.

Mr. STANTON. As this section seems to be purely legislative, I trust it will not pass. While the gentleman from Montgomery is urging the insertion of his

county, he might insert also the new county, Minnequa. [Laughter.]

The CHAIRMAN. Minnequa is not yet organized.

Mr. CORSON. Mr. Chairman: This is no trifling question. This is one of the most important amendments that have been proposed since I have been attending upon the discussion of the article reported by the Committee on the Judiciary. It is proposed at this time, I conceive, for the reason that last night in the hurry of the work of this Convention this committee voted down the twenty-ninth section in this report, which ought to have been adopted word for word as it was reported; and it was because of that hasty proceeding and that those of us who are here to defend the old trial by jury insist that some such clause as this shall go into the Constitution, so that the judges of Pennsylvania when they charge the juries shall go upon the record, and that what they say shall be written and what is written shall be reviewed. Therefore it is that I hope that this amendment will be adopted, not only for Philadelphia and Montgomery counties, but for the whole State; and if it should fail, I have a section that I propose to introduce.

Mr. KAINE. Mr. Chairman: The present Constitution in the third section of the sixth article provides for the manner in which prothonotaries and other officers of courts shall be appointed and elected. If this committee should determine by its vote upon this amendment to have this kind of officer for Philadelphia, I, as one of the Committee on Officers, should be willing to report for incorporating into the third section of the sixth article, a provision in regard to stenographic reporters for all the courts of the State, make it general.

The CHAIRMAN. The question is on the amendment of the delegate from Montgomery to the amendment of the delegate from Philadelphia.

The amendment to the amendment was rejected, there being, on a division, ayes twenty-five; less than a majority of a quorum.

The CHAIRMAN. The question is on the amendment proposed by the delegate from Philadelphia (Mr. Dallas.)

Mr. CUYLER. I move an amendment making it general where the bar request it. I move to strike out the words "each of the courts of Philadelphia" and insert "the Supreme Court and the several courts of common pleas shall, if the bar of

the court request, appoint a phonographic reporter," &c.

The CHAIRMAN. 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 delegate from Philadelphia (Mr. Dallas.)

The amendment was rejected.

The CHAIRMAN. The article has been gone through with.

Mr. CORSON. I move the following additional section:

"In every civil cause tried by a jury, the charge of the court, unless waived by the parties, shall be written before delivery, and shall be read to the jury, and upon request of any party to the proceeding shall be filed of record."

Mr. MANN. I rise to a question of order. The Convention has voted upon that proposition substantially already.

The CHAIRMAN. The amendment offered by the delegate from Montgomery is in different language.

Mr. CORSON. Mr. Chairman: the material difference between the section which I propose and the one reported by the committee is evident.

Mr. CORBETT. I rise to a point of order, that the article is disposed of and was so stated by the Chair.

The CHAIRMAN. The point of order is not well taken. The Chair announced that the article was concluded, but the delegate from Montgomery (Mr. Corson) rose to offer an amendment as an additional section, which the Chair received.

The question is on that amendment, upon which the delegate from Montgomery is entitled to the floor.

Mr. CORSON. Mr. Chairman: There is no one subject upon which the enlightened people of the world have been so long agreed as upon the trial by jury—called in nearly every Constitution in the United States

#### THE RIGHT INVIOATE;

guaranteed in all of them, and secured in the Constitution of the Republic itself; is coeval with the existence of the first civil government in England, and has been used time out of mind among all the northern nations of the old world. It is a privilege so ancient and honorable and so highly esteemed that without it the great Chart of Human Liberty would be considered as lifeless as Magna Charta would be meaningless; and constitutional law would be



but a high-sounding appellation for a spiritless apparition.

The people have surrendered nearly every other right. They have given over the right to make laws to their legislators; the right of adjudication thereon to the judges, and the execution thereof to the Executives and their instruments; but the right to determine whether or not one of their neighbors be guilty or not guilty of a crime of which he may be accused, they have reserved to themselves and retained in their own hands with unrelenting and zealous tenacity from the days of the old Athenians, and will not surrender it now without a struggle more desperate than revolution and more lasting than that trial by battle by which, in early days in England, the Normans sought to supplant this Anglo-Saxon trial by jury.

Thus, unabated and unabridged, unprofaned and unpolluted, we have written down this common law of righteousness called trial by jury, in our several Constitutions in the United States of America, as the Right Inviolable.

Hear what the great charters say:

#### TRIAL BY JURY.

The only reference to the "right inviolate" in the Constitution of the United States of September 17, 1787, is in the third paragraph of Article III in these words:

#### ARTICLE III.

SECTION 1. (3d ¶.) The trial of all crimes, except in cases of impeachment, shall be by jury.

#### AMENDMENTS PROPOSED BY CONGRESS AT ITS FIRST SESSION.

#### ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

#### ARTICLE VII.

In suits at common law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of

the United States, than according to the rules of the common law.

Adopted about 1789 to 1792.

1. The Alabama Constitution (adopted in 1868) is merely a transcript of the National Constitution in all provisions relating to the right of trial by jury, and the thirteenth paragraph of Article I, Section 1, reads: That the right of trial by jury shall remain inviolate.

2. The Arkansas Constitution, (1868,) sixth paragraph of Article I, Section 1, reads: The right of trial by jury shall remain inviolate.

3. The California Constitution, (1849-62,) third paragraph of Article I, Sect. 1, reads: The right of trial shall be secured to all and remain inviolate forever, &c., (but may be waived in civil cases.)

4. The Connecticut Constitution, (1818,) twenty-first paragraph, Article I, Sect. 1, reads The right of trial by jury shall remain inviolate.

5. The Constitution of Delaware, (1831,) fourth paragraph, Art. I, Sect. 1, reads: Trial by jury shall be as heretofore.

6. The Constitution of Florida, (1868,) fourth paragraph, Sect. 1, Bill of Rights, reads: The right of trial by jury shall be secured to all, and remain inviolate forever. (But may be waived in civil cases.)

7. The Constitution of Georgia, (1868,) Art. 5, page 13, reads: The right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolate.

8. The Illinois Constitution, (1870,) Art. 2, section 1, page 5, reads: The right of trial by jury, as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men, may be authorized by law.

9. The Indiana Constitution, (1851,) section 19, of the Bill of Rights, reads: In all criminal cases whatever, the jury shall have the right to determine the law and the facts. Section 20 reads: In all civil cases the right of trial by jury shall remain inviolate.

10. The Iowa Constitution, (1857,) reads, section 9, of the Bill of Rights: The right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty or property without due process of law.

SECTION 10. In all criminal prosecutions and in cases involving the life or

liberty of an individual, the accused shall have a right to a speedy and public trial by an impartial jury, to be informed of the accusation against him, and to have a copy of the same when demanded; to be confronted with the witnesses against him, to have compulsory process for his own witnesses; and to have the assistance of counsel.

11. The Kansas Constitution, (1859,) section 5, of the Bill of Rights reads as follows: The right of trial by jury shall be inviolate.

12. The Kentucky Constitution, (1850,) section 8 of Art. 13, reads: That the ancient mode of trial by jury shall be held sacred and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.

13. The Louisiana Constitution, (1868,) Article 6 of Title 1, (Bill of Rights,) reads: Prosecution shall be by indictment or information. The accused shall be entitled to a speedy public trial by an impartial jury of the parish in which the offense was committed, unless the venue be changed. He shall not be compelled to give evidence against himself; he shall have the right of being heard by himself or counsel; he shall have the right of meeting the witnesses face to face, and shall have compulsory process for obtaining witnesses in his favor. He shall not be tried twice for the same offense.

14. The Maine Constitution, (1820,) section 6, of Art. 1, reads: In all criminal prosecution the accused shall have a right to be heard by himself or his counsel, or either, at his election; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have a speedy, public and impartial trial; and except in trials by martial law or impeachment by a jury of the vicinity. He shall not be compelled to furnish or give evidence against himself, nor be deprived of his life, liberty, property or privileges, but by judgment of his peers or the law of the land.

SECTION 20. In all civil suits and in all controversies concerning property, the parties shall have a right to a trial by jury except in cases where it has heretofore been otherwise practiced; the party claiming the right may be heard by himself and his counsel, or either, at his election.

15. The Maryland Constitution, (1867,) article 5 of the Declaration of Rights, reads: That the inhabitants of Maryland

are entitled to the common law of England, and the trial by jury according to the course of that law, &c.

16. The Massachusetts Constitution, (1780,) Art. 12 of part first, reads: \* \* And no subject shall be arrested, imprisoned, despoiled or deprived of his property, immunities or privileges, put out of the protection of the law, exiled or deprived of his life, liberty or estate, but by the judgment of his peers or the law of the land. And the Legislature shall not make any law that shall subject any person to a capital or infamous punishment except for the government for the army and navy without trial by jury.

17. The Michigan Constitution, (1850,) Sec. 27 of Art. 6, says: The right of trial by jury shall remain, but shall be deemed to be waived in all civil cases, unless demanded by one of the parties, in such manner as shall be prescribed by law.

SECTION 28. In every criminal prosecution the accused shall have the right to a speedy and public trial by an impartial jury which may consist of less than twelve men in all courts not of record.

18. The Minnesota Constitution, (1857-8,) Sec. 4 of Art. 1, says: The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy, but a jury trial may be waived by the parties in all cases in the manner prescribed by law.

19. The Mississippi Constitution, (1868) says, Sec. 12 of Art. 1: The right of trial by jury shall remain inviolate.

20. The Missouri Constitution, (1865,) Sec. 17 of Art. 1, says: That the right of trial by jury shall remain inviolate.

21. The Nebraska Constitution, (1867,) Sec. 5 of Art. 1, says: The right of trial by jury shall remain inviolate, but the Legislature may authorize trial by a jury of a less number than twelve men in inferior courts.

22. The Nevada Constitution, (1864,) section 3 of Art. 1, says: The right of trial by jury shall be secured to all, and remain inviolate forever. (May be waived in civil cases.)

23. The New Hampshire Constitution, (1792,) Art. 16 of part 1, says: \* \* \* Nor shall the Legislature make any law that shall subject any person to a capital punishment (except for the government of the army and navy, and militia in actual service) without trial by jury.

24. The New Jersey Constitution, (1844,) paragraph 7 of Art. 1, reads: The right of trial by jury shall remain inviolate.

25. The New York Constitution, (1846,) section 2, Art. 1, reads: The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever. (May be waived in civil cases.)

26. The North Carolina Constitution (1868) says in section 19 of Art. 1: In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.

27. The Ohio Constitution (1850-51) says in section 5 of Art. 1: The right of trial by jury shall be inviolate.

28. The Oregon Constitution (1857) in section 18, Art. 1, says: In all civil cases the right of trial by jury shall remain inviolate.

29. Pennsylvania's Constitution, (1838,) section 6 of Art. 9, says: That trial by jury shall be as heretofore, and the right thereof remain inviolate.

30. The Rhode Island Constitution, (1842,) section 15 of Art. 1, says: The right of trial by jury shall remain inviolate.

31. The South Carolina Constitution, (1868,) section 14 of Art. 1: \* \* \* And the General Assembly shall not enact any law that shall subject any person to punishment without trial by jury.

32. The Tennessee Constitution, (1870,) section 6 of Art. 1, reads: That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.

33. The Constitution of Texas, (1869,) section 12 of Art. 1, reads: \* \* \* And the right of trial by jury shall remain inviolate.

34. The Vermont Constitution, (1793,) Art. 12 of part 1, reads: That when any issue in fact, proper for the cognizance of a jury, is joined in a court of law, the parties have a right to trial by jury, which ought to remain sacred.

35. The Virginia Constitution, (1870,) section 13 of Art. 1, reads: That in controversies respecting property, and in suits between man and man, the trial by jury is preferable to any other, and ought to be held sacred.

36. The West Virginia Constitution, (1872,) section 13 of Art. 3, reads: In suits at common law, where the value in controversy, exclusive of interests and costs, exceeds twenty dollars, the right of trial by a jury of twelve men, if required by either party, shall be preserved.

37. The Wisconsin Constitution, (1848,) section 5 of Art. 1, reads: The right of trial by jury shall remain inviolate; and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law.

What power has a jury, rightfully? Are the twelve men merely a dozen automatons to be moved and manipulated by a judge, or are they *themselves judges* of the law and the fact, or either; and in the enjoyment of this prerogative are they in any sense, of right, subordinate to the court? In *theory* we have no dispute in Pennsylvania. In all criminal cases the jury may judge of the law and the fact; in civil causes only of the fact. But in practice and in solemn truth *we have no trial by jury*. The judge who is generally an aspiring politician, if not a bitter partisan, comes into court to make capital for the next party canvass, and with an ambition never satisfied opens the campaign with a flourish of trumpets and a long harangue to the grand jury. Occasionally we find this body composed of such stamina that they will allow no partisan or other arbitrary dictation to swerve them from a conscientious performance of their duty unawed by the audacious dogmatism of the judge. I have known a grand jury of which Hon. Charles Kugler, of Montgomery county, was foreman, in the face of the most emphatic charge of a former judge, dare to ignore bills of indictment which had been framed in obedience to a spirit engendered during the late war; but such instances of manly courage in defense of human rights, American liberty and the province of juries, are rare, and so rare that they are distinguished because isolated and historical, because conspicuous.

The judges of our day, in Pennsylvania, not only declare the law, but make stump speeches to the jury, argue the cause, and expressly point out the view that they as judges take of the evidence. Jurors in the view of the judges are twelve blockheads, fitted up with the springs and keys which are played upon by the judges, and only such verdicts are rendered by the jury as the judges in their charges suggest, or if rendered are allowed to stand. This is the view of many men calling themselves judges, and jurors and lawyers allow the whip to be cracked over their heads, as the slaves of the South sank before their masters.

But there is a day coming when this thralldom shall cease; when these tyrants of the bench shall be taught that they shall not trample on the rights of the people with impunity; and the people will rescue their endangered prerogatives from the arrogance of an encroaching judiciary, as they recently overthrew the insolent proud institution of American slavery; albeit the soil redeemed and the liberties restored did deluge the land in blood.

I would prefer to educate the people as to their rights as jurymen, but first of all let us establish the rule in the Constitution as a fundamental law either that hereafter there must be nothing but trial by judge or else trial by jury in all its pristine purity and integrity.

Blackstone has told us:

"When the evidence on both sides is closed, and indeed when any evidence hath been given, the jury cannot be discharged (unless in cases of evident necessity) till they have given in their verdict; but are to consider of it and deliver it in, with the same forms as in civil causes; only they cannot in a criminal case which touches life or member give a privy verdict. But the judges may adjourn while the jury are withdrawn to confer and return to receive the verdict in open court. And such public or open verdict may be general, guilty or not guilty, or special, setting forth all the circumstances of the case, and praying the judgment of the court, whether, for instance, on the facts stated, it be rendered manslaughter or no crime at all. *This is where they doubt the matter of law, and therefore choose to leave it to the determination of the court, though they have an unquestioned right of determining upon all the circumstances and finding a general verdict if they prefer so to hazard a breach of their oaths.*"

That is, the jury are under oath to render a true verdict according to law, and under the responsibilities of that oath if they choose to run the risk they can find the law contrary to the direction of the court; an English jury have the unquestioned and unquestionable right to do so.

It is curious to observe how much more carefully and jealously the rights of the subjects are guarded in the aristocratic monarchical government of Great Britain than those of the citizens of the free Commonwealth of Pennsylvania.

In England the jury have an unquestionable right of determining both the law and the fact, if they choose, in criminal

cases, while here they shall not be permitted to sit in criminal or civil causes unless they take the law from the judge and render a verdict in matter of law as he shall direct.

The gentleman from Chester alluded to the appointment by Governor Shunk of his son-in-law to be judge in Chester county, under the old Constitution; well, long years afterwards this same son-in-law became judge in Montgomery county and he framed every verdict that was rendered during the ten years he sat on the bench, except in one instance, when a jury, of which the Hon. Thos. P. Knox, of Norristown, was foreman, rendered a verdict not exactly in accord with the wishes of the judge, and he immediately upon the rendition of the verdict drew his uplifted hand across his compressed lips and said "that verdict is set aside." This is not trial by jury, but trial by judge—a system of judicature perhaps more useful in the discovery of truth and in the administration of justice in the eyes of some people; but it is not trial by jury. The judge was pure and *thought* he was right. How fearful it would have been if he had been wrong.

It is admitted that the jury have the power even here to decide for themselves the law and the fact, but it is attempted to separate that power from the right. No such distinction is recognized in England; and it is believed that the instance is not to be met with in our government of the power to do an act being conferred on one branch of the government and the right to exercise that power conferred on another. The pardoning power is conferred on the Executive; who ever supposed that the right to exercise that power did not also appertain to the same department? Wherever there is in a government a grant of power to any department, unless the right to exercise that power is in express terms limited, it is believed the right follows.

Lord Coke says: "On the one hand, as the jury may as often as they think fit find a general verdict, I therefore think it unquestionable that they may so far decide upon the law as well as the fact, such a verdict necessarily involving both. In this I have the authority of Littleton himself, who hereafter writes that if the inquest (i. e. the jury) will take upon themselves the knowledge of the law upon the matter they may give the verdict generally. Upon the whole, as my mind is affected with this interesting sub-

ject, the result is that the *immediate* and direct right of deciding upon questions of law is entrusted to the judges; that in a jury it is only incidental; that in the exercise of this incidental *right* the latter are not only placed under the superintendence of the former but are in some degree controllable by them; and therefore that in all points of *law* arising on a trial juries ought to show the most respectful deference to the *advice and recommendation* of the judges." Unquestionably the jury should show respectful deference to the advice and recommendation of the judges; but this is a very different thing from the Pennsylvania practice of surrendering their judgments and consciences to the court, and tamely taking for the law whatever the judge may see fit to tell them. Lord Coke adds: "May this wise distribution of power between the two (court and jury) long continue to flourish unspoiled either by the proud encroachments of ill-designing judges or the wild presumption of licentious juries."

English history is not wanting in instances of ill-designing judges encroaching upon this palladium of liberty and urging, instructing and directing the jury to surrender and yield up this right and take the law from the court; and to the everlasting honor of English juries be it remembered that that same English history tells of a manly, independent and effectual resistance on their part to such encroachments on their prerogative. In this country the Hon. John P. Hale, of New Hampshire, is the most notable instance of independence in the assertion of the rights and powers of jurors; and to his unanswerable argument, published thirty years ago, in vindication of his course towards Chief Justice Joel Parker, of the Superior Court of Judicature of Connecticut, I am indebted for the most valuable hints I have been able to collect from any American writer on this great theme. He cites the trial of John Lilburne for high treason in 1549 (2 St. Tr., 69, 81, 82.) The prisoner insisted that the jury were judges of law and fact, but the court denied it. He insisted upon the privilege of reading law to the jury, but the court refused it. The jury, however, acquitted him, contrary to the instruction and direction of the court, and the jury by order of Parliament were examined before the Council of State for giving such a verdict. Here then were the king, the counsel and the Parliament, all on one side, and on the other an humble individual with no shield

to interpose between himself and the mighty combination arrayed against him save "twelve good men and true," and the manner in which those twelve men discharged themselves of the tremendous responsibility then resting upon them is an everlasting honor to their names and should be known wherever the trial by jury is in vogue among the people:

Thomas Green, *Tallow Chandler*, in answer to questions proposed to him, said "That he did discharge his conscience in what he then did, and he will give no other answer to any questions which shall be asked him upon that matter."

Michal Rayner, *Leather Seller*, said "That he was satisfied in the verdict he gave in that case and that he should give no other answer thereto," but said "that he and the rest of the jury took themselves to be judges of matter of law as well as matter of fact; although he confessed that the Bench did say that they were only judges of the fact."

Thomas Tunman, *Salter*, said "He was sworn to find according to the issue and the evidence, and that he did find according to his conscience, and positively refused to give any other answer."

Emanuel Hunt, said "That what was found was done by the consent of all, and did satisfy their consciences therein; and refused to give any other answer."

James Stevens, *Haberdasher*, said "The jury having weighed all which was said, and conceiving themselves, (notwithstanding what was said by the counsel and bench to the contrary) to be judges of LAW as well as of fact they found him not guilty."

Richard Tomlins, *Bookbinder*, refused to give any answer to the question put to him, and said "He was not bound to give any account of what he did in that business but to God himself."

William Hitchcock, *Woollen Draper*, said "He had discharged his conscience in what he had done and would give no further answer."

Thomas Evershot, *Woollen Draper*, said "He was satisfied in his own conscience in what he did."

Thomas Smith, *Haberdasher*, said "He was called to serve his country in this particular; and that he had done it according to the best of his understanding."

Gilbert Gayne, *Grocer*, said "That the jury did find as they did, because they took themselves to be judges of the LAW as well as of the fact, and although the judges did declare they were the judges

of the fact only; yet the jury were otherwise persuaded from what they heard out of the law books." If that stern spirit which dwelt in the hearts of our forefathers be not altogether extinct and the attempt shall again be made to compel jurors to promise to take the law from the judge in a criminal trial, it is hoped some juror will answer in the spirit and dignity of a freeman that he will discharge his conscience and refuse to answer further, or taking the still higher ground of the honest bookbinder refuse to answer any one but God himself. Let jurors take this ground once or twice and they and their rights will be more respected by the court.

Juries should remember that they are not the creatures either of the court or the Legislature, but of the Constitution and that they are responsible to God and their consciences for the performance of their duty.

The most memorable occasion on which this matter was brought to the attention of the English nation was the trial of the Dean of St. Asaph in 1783 for libel, and in which Mr. Erskine made the great argument in favor of the prerogatives of jurors, pronounced by Mr. Fox the finest argument in the English language; and Parliament adopted the sentiments of this speech immediately by embodying them in the form of public law. The principles of this famous speech are simply that in criminal trials the jury not only have the power, but a constitutional legal right to judge of and pass upon both the law and facts and that this is a right fit to be exercised. (State Trials, vol. 21, 848.)

He showed conclusively that juries were in operation dispensing justice for many centuries without the control or intervention of any judicial authority delegated to fixed magistrates appointed by the crown. Although the court before whom this transcendent effort was made, had not the magnanimity to adopt its reasonings and its principles, yet the prisoner had no sentence passed upon him, but was discharged on some trivial technical objection, and was received by the people with bonfires, illuminations and other testimonies of attachment and gratulation, the principles of Mr. Erskine were adopted by the people and Parliament, while the court had the poor satisfaction of over-ruling the argument while they did not dare to condemn the prisoner.

Perhaps the most lucid and convincing statement of the law on this subject ever

laid down by an American jurist is the opinion of Judge Kent, in the case of "People vs. Crosswell," 3 Johnson's Cases 337. He says, speaking of the jury, "they are the *only* judges from whose sentence the indicted are to expect life or death. Upon their integrity and understanding the lives of all that are brought into judgment do ultimately depend. From their verdict there is no appeal. They resolve both LAW and fact, and this has always been their custom and practice."—*Essay on the power and duty of grand juries*, p. 7.

Judge Story, in speaking of Judge Kent, afterwards Chancellor Kent, says: "I gladly avail myself of this as well as of every other occasion to recommend his learned labors to those who seek to study the law or the Constitution with a liberal and enlightened spirit."—*Story's Commentaries on the Constitution*, p. 515, note.

"In every criminal case upon the plea of not guilty, the jury may, and indeed they *must*, unless they choose to find a special verdict, take upon themselves the decision of the law, as well as the fact, and bring in a verdict as comprehensive as the issue; because, in every such case, they are charged with the deliverance of the defendant from the crime of which he is accused. The indictment not only sets forth the particular fact committed, but it specifies the nature of the crime. Treasons are laid to be done traitorously, felonies feloniously, and public libels to be published seditiously. The jury are called to try, in the case of a traitor, not only whether he committed the act charged, but whether he did it *traitorously*; and in the case of a felon, not only whether he killed such an one or took such a person's property, but whether he killed with *malice prepense*, or took the property *feloniously*. So in the case of a public libeller, the jury are to try, not only whether he published such a writing, but whether he published it *seditiously*. In all these cases, from the nature of the issue, the jury are to try not only the *fact*, but the *crime*, and in doing so, they must judge of the *intent*, in order to determine whether the charge be true, as set forth in the indictment. (*Dagge on Criminal Law*, b. 1. c. 11. s. 2.) The law and fact are so involved, that the jury are under an indispensable necessity to decide both, unless they separate them by a special verdict.

This right in the jury to determine the law as well as the fact has received the sanction of some of the highest authorities in the law.

The inquest, says *Littleton* (s. 368.) may give a verdict as general as the charge, if they will take upon themselves the knowledge of the law. The same principle is admitted by *Coke*, and other ancient judges; (*Co. Litt.* 228. a. 4. *Co.* 53. b. *Wrey*, Ch. J. *Hob.* 227.) although they allege it to be dangerous for the jury to do so, because if they mistake the law, they run the hazard of an *attaint*. As the jury, according to Sir *Matthew Hale*, assist the judge in determining points of law. And it is the *conscience of the jury*, he observes, that must pronounce the prisoner guilty or not guilty. It is they, and not the judge, that take upon them his guilt or innocence. (*Hist. Com. Law*, c. 12. *H. P. C.*, vol. 2. 313.)

Following *Lilburne's* trial was *Bushnell's* case (*Vaughan* 135. Sir T. Jones 13.) He was one of the jurors, on the trial of an indictment for a misdemeanor, before the court of oyer and terminer in London, and was fined and committed, because he and the other jurors acquitted the defendant against full proof, and against the direction of the court in matter of law. He was brought into the court of C. B. upon *habeas corpus* and discharged; and Lord Ch. J. *Vaughan* delivered, upon that occasion in behalf of the court, a learned and profound argument in favor of the rights of the jury. He admitted that where the law and fact were distinct, the provinces of the court and jury were exclusive of each other, so that if it be demanded what is a fact, the judge cannot answer it, and if what is the law, the jury cannot answer it. But that upon all general issues, where the jury find a general verdict, they resolve both law and fact completely, and not the fact by itself.

Upon the trial of *Algernon Sidney*, (3 *St. Tr.* 817,) the question did not distinctly arise, but Lord Ch. J. *Jeffries*, in his charge to the jury, told them that it was the duty of the court to declare the law to the jury, and the jury were bound to receive their declaration of the law. They did, in that case, unfortunately, receive the law from the court, and convicted the prisoner, but his *attainder* was afterward reversed by Parliament; and the law, as laid down on that trial, was denied and reprobated, and the violence of the judge, and severity of the jury, held up to the reproach and detestation of posterity. The case of the *Seven Bishops* (4 *St. Tr.*) is a precedent of a more consoling kind; it was an auspicious and memorable in-

stance of the exercise of the right of the jury to determine both the law and the fact. The counsel on the trial went at large into the consideration of the law, the intent and the fact; and although the judges differed in opinion as to what constituted a libel, they all gave their opinions in the style of advice, not of direction, and expressly referred the law and the fact to the jury. Mr. J. *Holloway*, in particular, observed that whether libel or not depended upon the *ill intent*, and concluded by telling the jury, *it was left to them to determine*.

In the case of *Tuchin*, (5 *St. Tr.* 542,) who was tried for a libel before Ch. J. *Holt*, in 1704, the judge, in his charge to the jury, expressly submitted to them the whole question on the libel. After reasoning on the libellous nature of the publication, he observes that *now they are to consider whether the words he had read to them, did not tend to beget an ill opinion of the administration of the government*.

But it is needless to multiply authority. It is settled in the United States, and no more significant instance of the independence of juries and the ability and firmness of counsel in maintaining their prerogatives is known than that in which Judge Woodward, now a member of this Convention, for his client in Pike county held the then judge to the law, obtained a verdict approved by all disinterested people, but in defiance of the dictum of the courts, and by lawyer's and jury's devotion to their rights prevented the conviction of a poor engineer who while sleeping with his train on a siding, not in violation of any rule of the company, unconsciously moved his train of cars and caused the death of several people. The judge dared to rebuke the jury for their verdict. Mr. Woodward defended the jury. A loud noise ensued and the judge resigned his office.

The present mode of jury trials is a fraud; the grandest, most fearful fraud known to a free people. A suitor sits in the temple where injustice is administered and hears the judge charge his cause away and direct the verdict of the jury; the lawyer excepts to the charge and requests it to be written and filed. Perhaps six months afterwards the judge writes out the charge from his skeleton notes, after he has tried fifty other cases, and files it, and it is no more like the argument he addressed to the jury than the photograph of a delegate to this Convention is like his bowels and brain and

blood. The poor client loses his case, and the judge sits unharmed upon his throne.

I would have every charge written out in full before delivery, read to the jury and during the reading the judge and jury should stand, and not remain seated as is often the case. At the close of the law instructions from the judge, the charge should be handed to the jury and after the rendition of the verdict should be filed of record in the cause.

This course would keep juries awake by keeping them on their feet during the delivery of a long dull charge, would compel the judges to be truthful and fair in their utterances, and would enable all suitors to get their cases honestly and fairly before the Supreme Court for revision. This is never done now in a jury trial where unwritten charges are delivered. It cannot be done. It is impossible for a conscientious judge to remember his charges so as to write them out accurately; and a judge without a conscience would not care to try to remember.

The juries stand now in several States.

In Arizona Territory they sit or stand as they prefer.

In Maryland the judge never "sums up" to the jury.

In Nevada the judge is required to reduce his charge to writing before delivery, and in civil causes must do so whenever requested.

In Connecticut the judge and jury both stand during the delivery of the charge.

In New York the jury generally stand, but it is not an invariable rule.

In Tennessee the judge must deliver a written charge when requested.

In Indiana the same rule prevails as in Tennessee.

In Florida the charge must be written, and the Supreme Court have held it to be an error if any part be delivered before it be reduced to writing.

In Iowa the charge must be reduced to writing and delivered in writing.

In Montana the charge must be reduced to writing before it is delivered.

In Wisconsin the charge must be reduced to writing.

In Nebraska the charge must be written before delivery if requested, and if judge or jury stand both must do so.

In Texas no judge shall charge the jury on the weight of the evidence, or is allowed to discuss the facts; and there are many other restrictions on the judge.

In Oregon it is as in Pennsylvania: The act of Assembly of April 15, 1857, requires a written charge if requested by an attorney. But we all know how it provokes the ire of a judge to invoke the aid of this act of Assembly. A lawyer might as well get up behind the bench and kick the judge in the seat of justice and tear his legal tender, as to request him, however politely, to write down his charge before addressing it to the jury.

I have no personal grievances. I have voted in this Convention consistently for the election of judges by the people, and against the section providing for the appointment of judges by the Governor. I speak against the system, not the judge in our district, against whom I had the honor to be the Republican candidate when he was first elevated to the bench. I would gladly, in one-half of the cases tried in the common pleas, waive a jury trial altogether and submit to the determination of such a lawyer as Judge Ross, and I always prefer a case stated to a tedious trial in court. But what I inveigh against with all the ardor of my soul, is that when twelve men are called according to the rule of the common law of our land to try an issue between our citizens, that they shall have the right which, time out of mind, has belonged to them, of deciding the questions according to the law and the evidence, without dictation from the court.

I admit that the best evidence of what the law is, is what the judge says it is, but it is the duty of the jury to make the application of the law and find the facts. It will be said that the judge cannot pause in every trial to write out his charge before he delivers it to the jury. But he can. He can cite the law by book and page in the written charge, and as for the testimony he has nothing to do with it, and has no right to speak of the weight of the evidence to the jury. Judge Haines, of West Chester, who was not considered an active man at all, in one of the most important trials ever had in Montgomery county—*Smith vs. Norristown Railroad Company*—wrote out his charge, and immediately upon the conclusion of the argument of counsel, read it to the jury and then filed it with the prothonotary. There was neither any difficulty about what was contained in that charge nor a moment's delay in its delivery. It was a masterpiece of fairness and perspicuity. In important causes the counsel could prepare charges for the judge, and the judge could



mark the one which he holds to be law, "allowed," and the other "refused," as is done now in many courts in the United States. I once tried a very important cause in Chicago, in the circuit court of the United States for the Northern district of Illinois, and I was astonished to see how readily Judge Blodgett submitted his charge in writing the moment the case was concluded.

It is also said that short-hand reporters are now provided for, and the counties can, under the act of Assembly of April 15, 1867, secure the services of a phonographer to follow the judge and write down as he speaks what he says. It is rare that such an accomplished reporter could ever be secured in the rural districts, especially at the salary fixed, five dollars per day. The judges have power to make the appointment, but may never exercise it. It also fearfully increases the expenses of legal proceedings; for all parties requiring copies of the phonography must pay for it as for exemplifications of records. No one but a scholar in the art could make the copy.

If jurors should make clear mistakes the remedy is always at hand and under the control of the court upon a motion, for new trial. But enough.

In nearly all the States there are either constitutional or statutory restrictions, or both, on the right of the judge to charge the jury, and in all States there is a careful guardianship over the sacred right of trial by jury, free from the interference of those judges who are accustomed, when left unrestrained, to transcend their peculiar province. As the distinguished gentleman from York (Hon. J. S. Black) has said, "since the days of Nimrod no man ever had power or thought he had it but that he held on to it," and aggrandized it rather than abated his hold upon it in the exercise of his supposed prerogatives.

It is said that after the book of Judges comes the book of Kings; and one of America's greatest statesmen (Charles Sumner) in 1854 gave utterance to a great deal of truth in a few sentences when he said: "For myself, let me say that I hold judges in much respect; but I am too familiar with the history of judicial proceedings to regard them with any superstitious reverence. Judges are but men, and in all ages have shown a full share of human frailty. Alas! Alas! the worst crimes of history have been perpetrated under their sanction. The blood

of martyrs and of patriots crying from the ground summon them to judgment. It was a judicial tribunal which condemned Socrates to drink the fatal hemlock, and which pushed the Savior barefoot over the pavements of Jerusalem bending beneath his cross. It was a judicial tribunal which, against the testimony and entreaties of her father, surrendered the fair Virginia as a slave; which arrested the teachings of the great apostle to the Gentiles, and sent him in bonds from Judea to Rome; which, in the name of the Old Religion, adjudged the saints and fathers of the Christian church to death, in all its most dreadful forms, and which afterwards, in the name of the New Religion, enforced the tortures of the inquisition amidst the shrieks and agonies of its victims, while it compelled Galileo to declare, in solemn denial of the great truth he had disclosed, that the earth did not move around the sun. It was a judicial tribunal which in France, during the long reign of her monarchs, lent itself to be the instrument of every tyranny, as during the brief reign of terror it did not hesitate to stand forth the un pitying accessory of the un pitying guillotine.

"Aye, sir, it was a judicial tribunal in England, surrounded by all the forms of law, which sanctioned every despotic caprice of Henry the Eighth, from the unjust divorce of his queen to the beheading of Sir Thomas More; which lighted the fires of persecution that glowed at Oxford and Smithfield over the cinders of Latimer, Ridley and John Rogers; which, after elaborate argument, upheld the fatal tyranny of ship-money against the patriot resistance of Hampden; which, in defiance of justice and humanity, sent Sidney and Russell to the block; which persistently enforced the laws of conformity that our Puritan fathers persistently refused to obey, and which afterwards, with Jeffries on the bench, crimsoned the pages of English history with massacre and murder, even with the blood of innocent women. It was a judicial tribunal which hung witches at Salem, affirmed the constitutionality of the old stamp act," decided both ways on the question of the present legal tender law, and to-day no judicial tribunal will ever determine a political question except in accordance with the political views of a majority of the court. Let us preserve trial by jury. Keep court and jury separate, and we shall always have untarnished esteem for the RIGHT INVIOLEATE.

The CHAIRMAN. The question is on the amendment of the delegate from Montgomery (Mr. Corson.)

The amendment was rejected, ayes twenty-three; less than a majority of a quorum.

Mr. CUYLER. I desire to ask if the schedule of this report has been gone through.

The CHAIRMAN. The schedule is not part of the report referred to the committee of the whole.

Mr. CUYLER. Then I desire to propose an amendment to the report itself as a new section:

"The court of *nisi prius* as heretofore existing and established in the city and county of Philadelphia shall continue and be holden by the judges of the Supreme Court, who shall detail from time to time one of their number to preside over the same. The Legislature may prescribe from time to time the nature and extent of the jurisdiction of said court and the mode of exercising the same."

Mr. CORBETT. Now I rise to a point of order. The twenty-first section of the report as adopted by the committee of the whole expressly abolishes this court, and it has been adopted by this committee.

The CHAIRMAN. The point of order is not well taken for the reason that the section (No. 21) abolishes the *nisi prius* court generally; and this provides for a *nisi prius* court in the city of Philadelphia.

Mr. MANN. I rise to a question of order. The article as reported has been gone through with and the Chairman so stated. Now new matter is introduced which we have gone substantially over. We shall never get through if the Chair withdraws the decision and opens the whole article for new discussion.

The CHAIRMAN. The Chair will again state that he has decided that the report was gone through with, but out of courtesy to the delegate from Philadelphia, in accordance with the request of several delegates around him, he withdrew the decision and entertained the amendment. The point of order therefore is not well taken. The question recurs on the amendment.

Mr. DARLINGTON. I rise to a question of order. The point of order is that in section twenty-one, adopted by this committee, "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.

The CHAIRMAN. That point of order has been raised and over-ruled. The provision in the twenty-first section related to courts of *nisi prius* generally; this relates to the organization of a court of *nisi prius* for the city and county of Philadelphia.

Mr. DARLINGTON. Will the Chairman be good enough to state what other *nisi prius* court there is except that in Philadelphia?

The CHAIRMAN. That is not the question. The question of order has been decided.

Mr. DARLINGTON. There is no such court except in Philadelphia.

Mr. CUYLER. Mr. Chairman: No gentleman who practices at the bar of Philadelphia, I think, will doubt the importance of this amendment. I do not myself perceive how it is possible to transact the business which passes upon the courts of the city of Philadelphia, without the aid of the court of *nisi prius*. We have been accustomed to it for years. It has a class of business which is not well transacted in the other courts, and I believe it to be the unanimous verdict of the profession in this city that that court should continue to exist. In all large cities like Philadelphia a class of cases constantly arise in which it is desirable to have a judge who is removed from local influences, a judge who has been elected on a general ticket for the whole State and who can grasp the peculiar questions which are presented in that court in a manner which our local judiciary cannot do. It is not only for the reason that the assistance of this court is necessary in the very large amount of business which is to be transacted in this county of Philadelphia, but still more largely and chiefly for the reason I mentioned, that a jurisdiction of the nature I have just described is in this county exceedingly important. We want a judge who has been elected by the people of the whole State; such we should have in the court of *nisi prius*. I have never heard any objection in my past experience to the court of *nisi prius* except one.

Mr. CORBETT. Will the gentleman allow an interruption?

Mr. CUYLER. Certainly.

Mr. CORBETT. Would it not be better if the people of the State outside of Philadelphia, excluding Philadelphia, elected this judge?

Mr. CUYLER. No, I do not think it would. I do not perceive any argument that could be urged in support of such a

view. I would be very glad to hear from the gentleman some view that might be persuasive.

Mr. BOYD. Will the gentleman allow me to move to amend?

Mr. CUYLER. Certainly.

Mr. BOYD. Allow me to move to amend by adding, "the seventh judicial district," so that the *nisi prius* court shall be held in the city of Philadelphia and the seventh judicial district.

Mr. CUYLER. I do not give way, Mr. Chairman, for the purpose of introducing that as an amendment. The gentleman may move it, if he thinks proper at the proper time, but I do not give way for that purpose now.

I have never heard any complaint with regard to the court of *nisi prius* except one, which came chiefly from the country bar, and which was not without a great deal of force; and that was that the detailing of one judge of the Supreme Court constantly to hold this court, and the very frequent instances in which another judge would be sick, very often left the court in banc to be composed of only three judges, so that causes were constantly decided by two, which would be a majority of three who were actually sitting. That complaint had great force in it. But with a Supreme Court that will have fresh blood infused into its veins, with a Supreme Court that will consist of seven judges, it must be always practicable to detail one judge who may sit in the court of *nisi prius*, and still leave enough to compose a full court of five judges to sit upon any cause that actually comes up for argument.

I trust, therefore, that the committee having removed the only objection that ever existed to this court by agreeing to increase the number of judges in the Supreme Court, will not permit the revolutionary change of sweeping the court of *nisi prius* itself out of existence, and, therefore, I have proposed this additional section.

Mr. BOYD. I move to amend the amendment by adding the counties of Montgomery and Butler. [Laughter.]

The CHAIRMAN. The amendment is not in order. The question is on the amendment proposed by the delegate from Philadelphia (Mr. Cuyler) as a new section.

The amendment was rejected.

Mr. PUGH. I move to reconsider the vote taken this morning upon section thirty-two.

Mr. TURRELL. I second the motion.

The CHAIRMAN. It is moved to reconsider the vote on the thirty-second section. The section will be read.

The CLERK read as follows:

SECTION 32. The parties, by agreement filed, may in any civil case dispense with the trial by jury and submit the decision of such 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.

Mr. BROOMALL. That is not the question as I understand it. It is to reconsider the final vote upon the section as amended.

The CHAIRMAN. That is necessarily the question. The question is on reconsidering the final vote by which the substitute for this section as adopted by the committee of the whole was voted down.

Mr. MANN. How can that be done? The majority did not vote at all.

The CHAIRMAN. Every gentleman is presumed to have voted in the majority in committee of the whole. It is competent to reconsider.

Mr. MANN. How?

The CHAIRMAN. By making and seconding a motion to reconsider.

Mr. MANN. Who is to move the reconsideration?

The CHAIRMAN. Any delegate in the Convention.

Mr. DARLINGTON. Who voted in the majority?

The CHAIRMAN. Any delegate in the Convention.

Mr. MANN. Heretofore it has been ruled that it must be a delegate voting in the majority.

The CHAIRMAN. That is where the yeas and nays have been called.

Mr. MANN. It has always been so held.

The CHAIRMAN. The Chair has decided the question.

Mr. MANN. Have we no rules this afternoon?

Mr. NILES. What is to be reconsidered by this vote?

The CHAIRMAN. The vote by which the substitute for section thirty-two was voted down. It is now before the Convention for reconsideration.

Mr. BROOMALL. Let the substitute be read.

The CLERK read as follows:

"The parties, by agreement filed, may in any civil case dispense with the trial by jury and submit the decision of such case to the court having jurisdiction thereof; and such court shall hear and determine the same, and the final judgment therein shall be subject to the writ of error as in other cases.

Mr. DARLINGTON. I understand that not to have been the final question, but the question upon the amendment. I apprehend that it is not in order to reconsider the vote upon the amendment which was to take the place of the section, because it is not the final vote, but the vote must first be reconsidered on the section itself.

The CHAIRMAN. The Chair will state that the substitute offered by the delegate from Allegheny (Mr. S. A. Purviance) was first adopted. The question then was on the section as thus amended. That was voted down. The question now is on reconsidering that vote.

The motion to reconsider was not agreed to, there being, on a division: Ayes, thirty-four; noes, thirty-seven.

The CHAIRMAN. The article has been gone through with.

[Several delegates. "Let us rise."]

The article reported by the Committee on the Judiciary being concluded, the committee of the whole rose; and the President, *pro tempore*, 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 directed him to report the same with amendments.

The PRESIDENT *pro tempore*. The amendments will be read.

The CLERK proceeded to read the amendments.

Mr. MACVEAGH. Is it in order to move to dispense with the further reading of the amendments?

The PRESIDENT *pro tempore*. It is.

Mr. MACVEAGH. I make that motion.

Mr. KAINE. I hope the gentleman will amend his motion by adding thereto that the same be printed.

The PRESIDENT *pro tempore*. The article as amended will be printed under a general order of the House. The question is on the motion of the gentleman from Dauphin (Mr. MacVeagh.)

The motion was agreed to.

The amended article as reported is as follows:

## ARTICLE —.

### OF THE JUDICIARY.

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.

### SUPREME COURT.

SECTION 2. The Supreme Court shall consist of seven judges, who shall be elected by the qualified voters of the State at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not be eligible to re-election. 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.

### JURISDICTION OF SUPREME COURT.

SECTION 3. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall by virtue of their offices be justices of oyer and terminer and general jail delivery in the several counties. They shall have original jurisdiction in cases of *habeas corpus*, and of *mandamus* to courts of inferior jurisdiction, and in case of *quo warranto* as to all officers of the Commonwealth whose jurisdiction extends over the State, but shall not exercise any other original jurisdiction. They shall have appellate jurisdiction by appeal *certiorari*, or writ of error in all cases, as is now or may hereafter be provided by law.

### COURT OF COMMON PLEAS.

SECTION 4. Until otherwise directed by law 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 5. 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. And the Legislature is hereby prohibited from creating other courts to exercise the power vested by this Constitution in said courts of common pleas and orphans' courts. The number of judges in any of said courts or in any county where the establishment of an additional court may be authorized by law may be increased from time to time. *Provided*, That whenever such increase shall amount in the whole to three, such three shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid.

SECTION 6. 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 7. 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 three years, subject to removal by a majority of the said judges. The said prothonotary shall appoint such assistants as may be necessary and authorized by said courts, and he and his 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, as are or may be directed by law.

SECTION 8. 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 9. 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 10. In every criminal case the accused as well as the Commonwealth may remove the indictment, record, and all proceedings to the Supreme Court for review, in the same manner as civil cases are now removed and reviewed. But such removal shall not, except in capital cases, be a *supersedeas*, unless the judge before whom the case was tried shall certify that the same is a proper one for review.

SECTION 11. The judges of the Supreme Court and the judges of the courts 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 proceedings to be brought before them and right and justice be done.

# JUSTICES OF THE PEACE AND ALDERMEN.

SECTION 12. Justices of the peace or aldermen shall be elected in the several wards, districts, boroughs and townships at the time of the election of constables by the qualified voters thereof in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of five years. But no township, ward, district, or borough shall elect more than one justice of the peace or alderman, without the consent of a majority of the qualified voters within such township, ward or borough. No person shall be elected to such office unless he shall have resided within the township, borough, ward, or district 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.

In the city of Philadelphia there shall be established, in lieu of the office of alderman and justice of the peace as the same now exists, one court (not of record) of police and civil causes not exceeding \$100, 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, and in the election of the said judges no voter shall vote for more than two-thirds of the number of persons to be chosen. They shall be compensated only by fixed salaries, to be paid by said city, and shall exercise such jurisdiction, civil and criminal, except as herein modified, as is now exercised by aldermen and justices of the peace.

All costs in criminal cases 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.

SECTION 13. In all cases of summary conviction or of judgment in suit for a penalty, before a magistrate or court not of record, either party shall have the right to appeal to such court of record as may be prescribed by law.

#### GENERAL PROVISIONS.

SECTION 14. All judges required to be learned in the law, except the judges of the Supreme 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 period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature.

SECTION 15. Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen he shall vote for no more than two; and candidates highest in vote shall be declared elected.

SECTION 16. Should any two or more judges of the Supreme Court 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 therewith.

SECTION 17. The judges of the Supreme 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, and wholly paid by the State, (except the judges of courts not of record,) which shall not be diminished during their continuance in office; but they shall receive no other compensation for their services from any other source, nor any fees or perquisites of office, nor hold any other office of profit under this Commonwealth nor under the United States or any other State.

SECTION 18. The judges of the Supreme 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 be respectively 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 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 immediately preceding his appointment or election.

SECTION 19. The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts such powers of a court of chancery as are now vested by law in the several courts of common pleas of this Commonwealth, or as may hereafter be conferred upon them by law.

SECTION 20. No duties shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial; nor shall 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.

SECTION 21. A register's office for the probate of wills and granting letters of administration, and an office for 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.

In every city and county wherein the population shall exceed two hundred thousand, the Legislature shall, and in any other county or judicial district may, establish a separate orphans' court, to con-

sist of one or more judges who shall be learned in the law, and which court shall exercise all the jurisdiction and powers now vested in or which may hereafter be conferred upon the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such city or county, in orphan's court proceedings, shall cease and determine.

The register of wills shall be compensated by a salary to be fixed by law, and shall be *ex officio* clerk of such separate orphans' court, and subject to the direction of said court in all matters pertaining to his office. Assistant clerks may be appointed by the register, but only with the consent and approval of the court.

All accounts filed in the register's office and such separate orphans' court shall be audited by the court without expense to the parties, except where all parties in interest in a pending proceedings shall nominate an auditor, whom the court may in its discretion appoint.

SECTION 22. 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 23. Any vacancy happening by death, resignation or otherwise, in any court of record, shall be filled by appointment by the Governor, to continue till the first Monday of December succeeding the next general election.

SECTION 24. Each county containing thirty-thousand inhabitants shall constitute a separate judicial district and shall elect one judge learned in the law, and the Legislature shall provide for additional judges as the business of the said districts may require. Counties containing a population less than is sufficient to constitute separate districts, shall be formed into convenient single districts, or if necessary may be attached to contiguous districts, as the Legislature may provide. The office of associate judge not learned in the law is abolished excepting in counties not forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms.

SECTION 25. 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 decision of such courts shall be uniform.

Mr. BROOMALL. Is there any question before the House?

The PRESIDENT *pro tem*. There is not.

Mr. BROOMALL. I would ask then if it is in order to move that the schedule be referred to the Committee on Schedule? It was not reported exactly with the article, but it was attached to it, and the idea was to have some disposition made of it. If it is in order now, I move that the part of the article headed "schedule" be referred to the Committee on Schedule.

The PRESIDENT *pro tem*. The Chair supposes that it would go to that committee at any rate.

Mr. KAYNE. I do not think it is necessary to go through that form, because I do not believe there is anything in the schedule now that applies to this report.

The PRESIDENT *pro tem*. Does the gentleman from Delaware insist on his motion?

Mr. BROOMALL. No, sir. I do not know that I care anything about it.

COMMERCE, MANUFACTURES, &c.

Mr. LILLY. I think the next thing in order is report No. 7, and I move that the House resolve itself into committee of the whole on that report.

The PRESIDENT *pro tem*. The next report in order is report No. 11.

Mr. BIGLER. What is it?

The PRESIDENT *pro tem*. The report of the Committee on Agriculture, Mining, Manufactures and Commerce. It is moved that the House resolve itself into committee of the whole on this article.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Cuyler in the chair.

The CHAIRMAN. The committee of the whole have had referred to them the article reported by the Committee on Agriculture, Mining, Manufactures and Commerce. The Clerk will read the first section.

The CLERK read as follows:

SECTION 1. In the absence of special contracts the legal rate of interest and discount shall be seven per centum per annum, but special contracts for higher or lower rates shall be lawful. All national and other banks of issue shall be restricted to the rate of seven per centum per annum.

Mr. ANDREW REED. I move to amend the section by striking out all after the word "lawful" in the third line. There is no reason why a different rule should be applied to a bank from that which is applied to any other person. I certainly can see no reason whatever for it, and the benefit which is presumed to be bestowed by the principle of the section will be lost if it is not applied to banks.

Mr. CAREY. Mr. Chairman: The question now before us is one that involves the relations of capital and labor, and is therefore one of the most important which will be brought before this Convention. It ought of right, as I think, to be considered the report of the Committee on Industrial Interests, of which I have the honor to be chairman. I have therefore deemed it my duty to examine it at length, and I propose now to present what I have to say in regard to it. I shall be obliged to trespass upon the Convention considerably longer than the time that is usually allotted, but as I do not very often trouble them, perhaps they will give me the time that I require. ["Certainly; go on."] I do not know whether my voice will enable me to make myself heard, but I will try.

Mr. LANDIS. I move that the gentleman's time be extended in advance.

Mr. CARTER. I hope that will be done, the speech consisting as it does of statistics and the results of great research.

The CHAIRMAN. If there be no objection, the gentleman from Philadelphia will be allowed to proceed without interruption.

Mr. CAREY. Mr. Chairman: Precisely a century and a half since, in 1723, the General Assembly of Pennsylvania reduced the legal charge for the use of money from eight to six per cent. per annum. This was a great step in the direction of civilization, proving, as it did, that the labor of the present was obtaining increased power over accumulations of the past, the laborer approaching toward equality with the capitalist. At that point it has since remained, with, however, some change in the penalties which had been then prescribed for violations of the law.

Throughout the recent war the financial policy of the national government so greatly favored the money borrower, and the laborer, as to have afforded reason for believing that the actual rate of interest was about to fall permanently below the legal one, with the effect of speedily caus-

ing usury laws to fall into entire disuse. Since its close, however, under a mistaken idea that such was the real road to resumption, all the treasury operations have tended in the direction of favoring the money lender; the result exhibiting itself in the facts, that combinations are being everywhere formed for raising the price of money; that the long loans of the past are being daily more and more superceded by the call loans of the present; that manufacturer and merchant are more and more fleeced by Shylocks who would gladly take "the pound of flesh nearest the heart" from all over whom they are enabled to obtain control.

Anxious for the perpetuation of this unhappy state of things, these latter now invite their victims to give their aid toward levelling the barriers by which they themselves are even yet to a considerable extent protected; assuring them that further grant of power will be followed by greater moderation in its exercise. Misled thereby, money borrowers, traders and manufacturers, are seen uniting, year after year, with their common enemy in the effort at obtaining a repeal of the laws in regard to money under which the State has so long and so greatly prospered. Happily, our working men, farmers, mechanics, and laborers, fail to see that advantage is likely to accrue to them from a change whose obvious tendency is that of increasing the power of the few who have money to lend over the many who need to borrow; and hence it is that their representatives at Harrisburg have so steadily closed their ears against the siren song by which it is sought to lead their constituents to give their aid to the work of their own destruction.

Under these circumstances it is that we are now asked to give place in the organic law to a provision by means of which this deplorable system is to be made permanent; the Legislature being thereby prohibited, be the necessity what it may, from placing any restraint upon the few who now control the supply of the most important of all the machinery of commerce, as against the many whose existence, and that of their wives and children is dependent upon obtaining the use thereof on such terms as shall not from year to year cause them to become more and more mere tools in the hands of the already rich. This being the first time in the world's history that any such idea has been suggested it may be well, before determining on its adoption, to study what



has been elsewhere done in this direction, and what has been the result, as follows:

Forty years since English money lenders were busily engaged in singing the same siren song that is now being here repeated. Journalists in their pay assured manufacturers and traders that the road toward the cheapening of money lay in the direction of abolishing all restrictions upon the contracts of those who alone could furnish it; and that the more completely the hands of the rich were freed the lighter would be the blows that would be dealt among the poor and the weak by whom they were everywhere surrounded. As the result of the combined effort thus brought about, Parliament was led to pass the act of 2d Victoria, by which it was provided that—"from and after the passing of this Act, no Bill of Exchange or Promissory Note made payable at or within twelve months after the date thereof, or not having more than twelve months to run, nor any contract for the loan or forbearance of money above the sum of ten pounds sterling shall, by reason of any interest taken thereon or secured thereby, or any agreement to pay or creating or transferring any such Bill of Exchange or Promissory Note be void, nor shall the liability of any party to such Bill of Exchange or Promissory Note nor the liability of any person borrowing any sum of money as aforesaid be affected by reason of any statute or law in force for the Prevention of Usury, nor shall any person or persons or body corporate drawing, accepting, endorsing or signing any such Bill or Note, or lending or advancing or forbearing any money as aforesaid, or taking more than the present rate of interest in Great Britain and Ireland respectively for the loan or forbearance of money as aforesaid be subject to any penalties under any statute or law relating to Usury or any other law whatsoever in force in any part of the United Kingdom to the contrary notwithstanding: *Provided always*, That nothing herein contained shall extend to the loan or forbearance of any money upon security of the lands, tenements, or hereditaments, or any estate or interest therein."

For a century previous to the passage of this act, as we are informed by a recent and very able writer, the rate of interest at the bank of England and in the numer-

ous local banks had never varied to the extent of even one per cent.; and the average rate had been slightly below the legal one—say about four and one-half per cent. Set free, however, from all restraint, and vested with power wholly unlimited, we find the bank at once engaged in causing fluctuations tending so to destroy public confidence as greatly to raise the price at which the use of money might be commanded. At one moment it is raised from four to ten per cent., a rate almost equal to twenty per cent. with us. At another, and without any reasonable cause, it is sent down to four, five or six; to be again raised to eight, nine or ten, and with results such as are here described by the writer above referred to:

"The other point worthy of attention is that while working this system of incessant variation the bank has managed greatly to raise the general level of the rate of interest. \* \* \* In the twenty-five years previous to the passing of the bank act (from 1819 to 1844) the rate of discount used to be four per cent. when the bank's stock of specie ranged between £10,000,000 and £7,000,000, rising to six per cent. (as in 1839-40) when the stock of specie fell to £3,000,000. \* \* \* But now it charges four per cent. when it has 15,000,000 of gold, and nine and ten per cent. when its stock of specie still amounts to 13,000,000. In this way the bank has been steadily working up the rate of interest until it has reached its present high level—that is to say, double what it used to be under similar circumstances in former times. \* \* \* In this way the level—the base line, so to speak—of the rate of interest has become permanently raised. Trade of course is proportionately mulcted. The bank, in fact, and all the banks which willingly, as well as of necessity, follow its example, now claims for itself a larger portion of the profits of trade than before. And thus industry is mulcted to the advantage of capital."\*

Following closely in the wake of the leviathan, we find London joint stock banks making dividends among their stockholders to the extent of twenty, thirty, and almost forty per cent., the whole of which has ultimately to be taken from the wages of labor employed in manufactures or in agriculture.† Looking

\* Blackwood's Magazine, June, 1866. Article, *The Rate of Interest*.

† The *Investor's Monthly Manual*, appendix to *London Economist* of Oct. 26,

1872, gives a table of dividends for 1871 and 1872, of 117 banking companies in the United Kingdom of England, Ireland and Scotland. The rates vary from 3 to 36 per

now to the manufacturing districts, we find loan associations charging a penny a week for the advance of a single shilling, giving an annual rate of nearly five hundred per cent. Turning thence to the courts, we find, in a case involving some £20,000, the judge denying to a plaintiff the verdict for which he had prayed, on the ground that, although the law was with him, the usury had been so monstrous that it could not conscientiously be allowed. At no time in Britain's history have pauperism and usury travelled so closely hand in hand together: the rich growing rich to an extent that, till now, would have been regarded as fabulous, and the wretchedness of the poor having grown in like proportion.

Looking now homeward, we see that throughout the period from 1861 to 1866, the energies of the country had been greatly given to the work of fitting out fleets and armies; of feeding and clothing almost millions of men; and of annihilating capital that had accumulated in

the past. For accomplishment of these various works large supplies were needed of that machinery of exchange known as money; and for nearly the whole thereof we were required to depend upon the domestic market; Britain, fortunately, having positively refused to lend us even a single dollar. Nevertheless, at the close of this scene of war and waste, there were in 1866 but ten States in which the legal rate of interest was more than six per cent. as follows:

California.....	10
Florida, Alabama, and Texas.....	8
New York, Michigan, Minnesota, Wisconsin, Georgia, and South Carolina.....	7

[In five of these the rate might, by special contract, be carried up to ten per cent.; in two to eight; and in two, Minnesota and Texas, to twelve per cent. In California, the power of the usurer is wholly unrestricted, as a consequence of which money-lenders entirely control the State.\*]

cent. per annum, including bonus. One only of them declares a semi-annual dividend of 18 per cent.; sixteen declare annual dividends of 20 per cent.; six of 18 per cent.; three of 16 per cent.; ten of 14 per cent.; seventeen of 12 per cent.; twenty-one of 10 per cent.; and so on down, without counting fractions. The reserved surplus of these institutions is not stated.

\*The following passage from a valuable paper on this subject, just now published by Mr. Nahum Capen, of Boston, exhibits the working of repeal at an earlier period, as tried in some of the Western and Southern States:

"The experiment of repealing the usury laws was made in Alabama; it was continued eleven months. I was informed in 1850, by U. S. Senator Lewis from that State, that they would not recover from the ruinous consequences under a quarter of a century. Nearly forty years ago it was tried in Indiana. In a letter from Hon. W. W. Wick, dated at Washington, D. C., March 7th, 1849, who was then a member of Congress from that State, he says: 'In Indiana the usury laws were repealed twelve or fourteen years ago, perhaps more, and were not reinstated for three or four years. The results were frightful.' \* \* \* 'If I had time I would be glad to make a sketch of the desolation left in the track of the usurer, during his brief reign in Hoosier land. I was judge of one of our circuits at the time, and was a shuddering witness to the desolations. I have rendered judgment upon contracts for payment of fifty or twenty cents per day for a loan of fifty or a hundred dollars, and in some instances the interest had

become more than ten times the amount of the principle.' \* \* \* 'I know many men of excellent natural qualities, and much inclined to be moral and gay, who became hopelessly demoralized and misanthropical. The moral desolations created by the absence of usury laws will tell upon any community to an extent almost infinitely beyond the ruin of estate.' \* \* \* 'As years pass away the evil results will develop themselves in a geometrical ratio. Long before they develop their full force and effects, the community will demand usury laws, and the blighting curses of many a withered or aching heart will follow the advocates of their repeal to their graves.'

"It is to be regretted that the entire and interesting letter of Judge Wick cannot be given. In 1849, repeal was voted by the Legislature of Wisconsin. In January, 1850, the Hon. J. P. Walker, U. S. Senator from that State, wrote a letter speaking of the fruits of repeal. He says, 'The argument in favor of this policy was, that the competition in the loan of money—the rate of interest being unrestricted—would produce a great influx of capital to the State. It certainly has produced an influx of money, but not of capital. The result is (and is to be) that money has been freely taken at an interest of from 20 to 50 per cent. The money loaned was that of non-residents.' A year later a letter was written and published by R. W. Wright, Esq., of Wakarusa, in which he says, 'The results of the law were so disastrous to the best interests of the State, and so contrary to the expectations of its friends, in increasing instead of diminishing the rates of interest, that the

Why was this? How was it that demands for money so unparalleled, here or elsewhere, had not only caused no movement upward in its price, but had actually been attended by such decline therein as to have led to the hope that usury laws would speedily become of no effect whatsoever? The answer to these questions is found in the fact, that for the first time in our history the supply of that machinery of exchange for whose use alone men pay interest, had come to bear a fair proportion to the need for its use. For the first time men paid in cash for almost everything they needed. For the first time commerce ceased to be clogged by the delays incident to a system under which—as before the war—almost everybody was in debt, and almost every one unable to obtain the money required for meeting his engagements. For the first time there was a perfectly healthful rapidity of circulation, giving to the societary body that industrial independence by means of which it was enabled, unaided from abroad, to furnish to the government materials and labor to the extent of thousands of millions of dollars, becoming stronger with each successive year.

Writing two years before the breaking out of the rebellion, Mr. Edward Everett was led, after careful inquiry, to estimate the purely personal debt of the country, apart from that of trade, manufactures, or agriculture, at fifteen hundred millions of dollars; "a mountain load," as he described it, "more deadly than fever or plague, more destructive than the frosts of spring, or the blights of summer;" and yet, multifarious as were the evils then so clearly presenting themselves to him as resulting from so sad a state of things, he had evidently failed to appreciate, to even a tithe of its real extent, the power thereby given to capital in its contest with labor, as, for the consideration of the Convention, it will be now exhibited.

Every one who parts with property payment for which is to be made at any future time, by so doing constitutes himself a money-lender to the extent of the amount whose payment is thus postponed. If the property be purely personal, he adds

to what would otherwise be the price so much as will cover the charge for the time and for the risk to be incurred. The borrower being regarded as a thoroughly responsible man, the interest thus charged may not exceed ten or twelve per cent. per annum; but passing downward in the societary scale the charge rises in the direct ratio of the poverty of the party borrowing, until at length we find the very poor, and the very weak, paying interest at the rate of sixty, eighty, a hundred, and perhaps even, as now in England, almost five hundred per cent. At the date at which Mr. Everett wrote there were here more than 16,000,000 of persons capable, more or less, of contracting debts, large or small; nineteen-twentieths of whom, as there is reason for believing, were paying interest at rates varying from ten to two hundred per cent. Had each one of these been required, daily or weekly, to give his note for the debt thus incurred, there would have been exhibited, to an amount greatly exceeding two thousand millions, uncurrent money as perfectly dead, so far as regarded all performance of exchanges, as if it had been buried in the earth. As a consequence of this the societary movement, in the first year of the war, was paralyzed to a degree greatly exceeding anything the country before had ever known. What then was needed was live money to take the place of the dead that was then being hourly created. To the end that this might be supplied, the nation, through its finance minister, proclaimed to all its members that it needed labor and labor's products in their various forms, and would give in exchange live money to the extent of \$400,000,000; or, in other words, money of such character as fitted it to be used for effecting exchanges of any and every kind whatsoever. At once the scene was changed, the employer being now enabled to pay cash for all the service, and all the materials, of which he stood in need; and the workman, in like manner, enabled to pay in cash for the food and clothing required by his family and himself. The farmer, now selling his crops for live money, was thus enabled to place the storekeeper in a position to

experiment was very readily abandoned. Its bitter fruits were left behind.' That they were left behind, may be inferred from a remark made by the Governor of that State, in his message in 1856. He said that the State would not recover from the shock for a generation. In Ohio they removed all penalties for usury in

1851, and allowed an interest by contract of 10 per cent. The experiment proved a sad one. In less than four weeks after the passage of the law, parties from that State were in New England and New York, soliciting large loans on real estate at 10 per cent."

buy for cash in the distant cities. Almost at once, and as if by magic, the usurious charges disappeared, thereby lightening the burdens of workingmen, farmers, mechanics, and laborers, to an annual extent thrice, if not even more than thrice, exceeding the amount of greenbacks issued.

Of all financial measures on record there has been none which has so much tended toward elevation of the laborer, and toward establishing harmony in the relations of labor and capital, as has been the case with that by which \$400,000,000 of live money, free of interest, was made to take the place of thousands of millions of dead money, for whose use our people had been paying interest at twice, thrice, and even twenty times the legal rates. Had the war given us nothing but this, it would be well worth to the nation, leaving out of view the waste of life, far more than all its cost. Nevertheless, we have among us financiers, so called, busily engaged in denouncing, as "a forced loan," the admirable machinery that thus has been given to our people, and insisting that we shall now discard it with the certainty before us of being thereby compelled to return to the dead-money system with its usurious rates. To a considerable extent this has been already done, the consequences exhibiting themselves in the money grievances in regard to which there is now so much and so just complaint.

With the close of the war, the work of destruction ceased. The soldier resumed his work in the factory and the field. The sailor, ceasing to aid in blockading southern ports, engaged himself in aiding the transports of southern cotton. Under such circumstances, production rapidly and largely increased, and with every step in that direction labor should have grown in power to command the use of machinery of exchange. Directly the reverse, however, from year to year the price of money has risen, and with such increase in the power of those who control the sources of supply that they are now being everywhere enabled to command the aid of traders, manufacturers, miners, and stock gamblers, in their effort at obtaining the passage of laws legalizing contracts at rates by means of which the burdens of laborers in the factory and the field must be much increased. Inquiring now of these men, or of their victims, the cause of the extraordinary change thus exhibited, we find ourselves assured that it is due to the immense extent to which

circulating capital is becoming fixed in buildings, factories, railroads, bridges, and other of the machinery required for the maintenance of commerce, and for the comfort and convenience of those engaged in the work. We are thus presented with the extraordinary fact that, while waste of labor and materials—to the extent of thousands of millions—had been attended by an actual decline in the price of money, an application of other thousands of millions to the work of production has caused, and is causing, such an increase in the power of money monopolists as to threaten ruin to some of the most important industries for which so many and so important works have been constructed.

That the cause thus alleged for the existence of the present extraordinary state of things has no foundation in fact, will be obvious to those who reflect that, whatever may be the uses to which it is applied, money never diminishes in quantity by reason of such application. Let a railroad company call for a million of dollars to-day, and let it forthwith distribute the same among laborers, mechanics, landowners, and rolling-mill proprietors, it will at once again present itself in the pockets of the former, and in the bank accounts of the latter, no change in the quantity having taken place. The more instant the exchange of money for labor and materials the less is the quantity of money used; and hence it is that with every stage of growth in the rapidity of the society circulation, the need for it in any material form, whether that of notes or coin, tends to diminish with diminution in the power of the money-lender to compel payment for its use. This, precisely, is what took place throughout the war, and hence it was that the rate of interest declined at the moment when national bonds were being issued to the extent of thousands of millions of dollars.

With the close of the war there came, however, a culmination of that monopoly system established under the national banking laws, by means of which the nation is required, in all the future, to accommodate itself to the procrustean bed thereby created. A decade has now elapsed since its author determined that the nation might be allowed, on certain conditions, to have, in addition to \$400,000,000 of greenbacks, the use of \$300,000,000 of circulating notes. Since that time our population has increased in numbers twenty-five per cent.; our manufactures have grown from two thousand to five

thousand millions; our railroads from thirty-three to seventy thousand miles; our internal commerce, as well as the space over which it is to be maintained, has probably quintupled; and yet, so far have his successors been from allowing the machinery of exchange to increase in fair proportion to the daily growing necessity for its use, that there has been and still is a constant effort at compelling diminution of its quantity; the result being seen in the fact that half a dozen individuals have now acquired power, by means of lock-ups and other contrivances, so to disturb the commercial operations of the whole nation as to compel those who have anything to lose to hesitate about engaging in any productive operations whatsoever requiring the use of credit. This, however, as we are told, is the road to resumption, however objectionable the results that thus far have been obtained. Were those who so instruct us to give this great question a little more attention, they would probably be led to the conclusion that the present sad state of things is consequent upon a policy which is daily compelling a substitution of dead for living money; and that the high rates of interest which thus are caused, tend to the destruction of that productive power to which alone can we look for the force required for enabling us ever again to witness a return to specie payments.

Closing their eyes to this, and failing to see that it is to increase in that power they are to look for permanent prosperity for themselves, railroad and other corporations are perpetually tormenting legislative bodies for permission to pay high rates of interest. Farmers and manufacturers, as a consequence, find it daily more and more difficult to obtain the aid of which they stand so much in need; and now, all are asked to ignore the great fact that the trouble is one that must increase from year to year so long as we shall persist in requiring that the man shall wear the shoe that had been fitted to the foot of the half-grown boy. Let them follow the advice that thus is given and the result must be that call loans, and interest calculated by the day, will become from hour to hour more general with daily increase of power on the part of Shylock to claim his "pound of flesh," and daily diminishing power on the part of both individuals and corporations to set limits to his exactions. Let them, on the contrary, set themselves diligently to work to make

our legislators comprehend that the road thus indicated is the road to ruin; that the remedy for existing difficulties is to be found in allowing the machinery of exchange to grow with the growth of population and production; and the day will not then be distant when usury laws will pass from existence by reason of a reduction of the charge for the use of money to a rate below that fixed by law even in that State in which it now is lowest. Then, and not till then, shall we enter on the road leading to a resumption of specie payments.

We may be told, however, that at times money is abundant, and that even so late as last summer it was difficult to obtain legal interest. Such certainly was the case with those who desired to put it out on call; but at that very moment those who needed to obtain the use of money for long periods were being taxed, even on securities of unexceptionable character, at double, or more than double, the legal rates. The whole tendency of the existing system is in the direction of annihilating the disposition for making those permanent loans of money by means of which the people of other countries are enabled to carry into effect operations tending to, secure to themselves control of the world's commerce. Under that system there is, and there can be, none of that stability in the price of money required for carrying out such operations.

Leaving out of view the recent great combination for the maintenance and perpetuation of slavery, there has been none so powerful, none so dangerous, as that which now exists among those who, having obtained a complete control of the money power, are laboring to obtain legal recognition of the right of capital to perfect freedom as regards all the measures to which it may be pleased to resort for the purpose of obtaining more perfect control over labor. Already several of the States have to some extent yielded to the pressure that has been brought to bear upon them. Chief among these is Massachusetts, the usury laws having there been totally repealed, and with the effect, says a distinguished citizen of that State, that "all the savings institutions in the city at once raised the rate from six to seven per cent.; those out of the city to seven and a half and eight per cent.; and there was no rate too high for the greedy. The consequence," as he continues, "has been disastrous to industrial pursuits. Of farming towns in

my county more than one-quarter have diminished in population." Rates per day have now to a great extent, as I am assured, superseded the old rates per month or year; two cents per day, or \$7 30 per annum, having become the charge for securities of the highest order. What, under such circumstances, must be the rate for paper of those who, sound and solvent as they may be, cannot furnish such security, may readily be imagined. Let the monopoly system be maintained and the rates, even at its headquarters, New England, will attain a far higher point than any that has yet been reached; this, too, in despite of the fact that her people had so promptly secured to themselves a third of the whole circulation allowed to the 40,000,000 of the population of the Union scattered throughout almost a continent. How greatly they value the power that has been thus obtained is proved by the fact that to every effort at inducing them to surrender, for advantage of the west or south, any portion thereof has met with resistance so determined that nothing has been yet accomplished.

Abandonment of our present policy is strongly urged upon us for the reason that mortgages bear in New York a higher rate of interest. A Pennsylvanian in any of the northern counties has, as we are told, but to cross the line to obtain the best security and seven per cent. Why, however, is it that his neighbors find themselves compelled to go abroad when desirous of obtaining money on such security? The answer to this question is found in the fact that the taxation of mortgages is there so great as to absorb from half to two-thirds of the interest promised to be paid. "The result of this," say the Tax Commissioners in their recent report—

"is exactly what might have been expected. Capital which formerly found its way into real estate is now directed into other channels; and to such an extent that were it not for the provisions of law which exempt the mortgage investments of savings banks and life insurance companies from taxation, and compel these institutions to invest a part of their capital in such securities, money could now hardly be obtained in New York for the improvement of real estate on pledge of the property. Again, it was formerly a very general custom to embody in wills a provision that property bequeathed or to be held in trust should be invested in mortgages; but this custom, the commis-

sioners are informed, is now almost entirely done away with, while executors and trustees are continually importuned by legatees to change the character of such investments, on the ground that they no longer continue to afford a fair interest."

Is there in the state of things thus exhibited anything to induce our people to adopt the New York system in lieu of that under which they have so long and so greatly prospered? For answer to this question we may turn to the report just now made, by the late Revenue Commissioner Wells, on State taxation, in which he points to "Pennsylvania under her system of taxation advancing with giant strides in wealth and population, while New York, under the influence of old and exploded ideas, moves onward in development comparatively at a snail's pace."

Again, we are told that Ohio legalizes "special contracts" up to eight per cent.; and that if we would prevent the efflux of capital we must follow in the same direction. Is there, however, in the exhibit now made by that State, anything to warrant us in so doing? Like Pennsylvania, she has abundant coal and ore. She has two large cities, the one fronting on the Ohio, and the other on the lakes, giving her more natural facilities for maintaining commerce than are possessed by Pennsylvania; and yet, while the addition to her population in the last decade was but three hundred and six thousand, that of Pennsylvania was six hundred and fifteen thousand. In that time she added nine hundred to her railroad mileage, Pennsylvania meantime adding two thousand five hundred. While her capital engaged in manufactures rose from fifty-seven to one hundred and forty-one millions, that of Pennsylvania grew from one hundred and ninety to four hundred and six, the mere increase of the one being more than fifty per cent. in excess of the total of the other. May we find in these figures any evidence that capital has been attracted to Ohio by a higher rate of interest, or repelled from our State by a lower one? Assuredly not!

What in this direction is proposed to be done among ourselves is shown in the section now presented for our consideration. By it the legal rate in the absence of "special contracts" is to be raised to seven per cent.; such "contracts," however ruinous in their character, and whatsoever the nature of the security, are to

be legalized; the only exception to these sweeping changes being that national banks issuing circulating notes are to be limited to seven per cent. Shylock asked only "the due and forfeit of his bond." Let this section be adopted, and let him then present himself in any of our courts, can its judge do other than decide that "the law allows it and the court awards it," monstrous as may have been the usury, and discreditable as may have been the arts by means of which the unfortunate debtor had been entrapped? Assuredly not. Shylock, happily, was outwitted, the bond having made no provision for taking even "one jot of blood." Here, the unfortunate debtor, forced by his flinty-hearted creditor into a "special contract" utterly ruinous, may, in view of the destruction of all hope for the future of his wife and children, shed almost tears of blood, but they will be of no avail; yet do we claim to live under a system whose foundation-stone exhibits itself in the great precept from which we learn that duty requires of us to do to others as we would that others should do unto ourselves.

By the English law the little landowner, the mechanic who owns the house in which he lives, is protected against his wealthy mortgagee. Here, on the contrary, the farmer, suffering under the effects of blight or drought, and thus deprived of power to meet with punctuality the demands of his mortgagee, is to have no protection whatsoever. So, too, with the poor mechanic suffering temporarily by reason of accidental incapacity for work, and, with the sheriff full in view before him, compelled to enter into a "special contract" doubling, if not even trebling, the previous rate of interest. Infamous as may be its extortion, the court may not deny the aid required for its enforcement.

The amount now loaned on mortgage security in this State, at six per cent., is certainly not less than four hundred, and probably extends to five hundred millions of dollars, a large portion of which is liable to be called for at any moment. Let this section be adopted, and we shall almost at once witness a combined movement among mortgagees for raising the

rate of interest. Notices demanding payment will fly thick as hail throughout the State, every holder of such security knowing well that the greater the alarm that can be produced, and the more utter the impossibility of obtaining other moneys, the larger may be made the future rate of interest. The unfortunate mortgagor must then accept the terms, hard as they may be, dictated to him, be they eight, ten, twelve, or twenty per cent. Such, as I am assured, has been the course of things in Connecticut, where distress the most severe has been produced by a recent abandonment by the State of the policy under which it has in the past so greatly prospered. At this moment her savings' banks are engaged in compelling mortgagors to accept eight per cent., payable in advance, as the present rate. How long it will be before they will carry it up to ten or twelve, or what will be the effect, remains to be seen. Already among ourselves the effects of the sad blunders of our great financiers exhibit themselves in the very unpleasant fact that sheriffs' sales are six times more numerous than they were in the period from 1864 to 1867, when the country was so severely suffering under the waste of property, labor and life which had but then occurred. Let this section be adopted, giving perfect freedom to the Shylocks of the day, and the next half dozen years will witness the transfer, under the sheriff's hammer, of the larger portion of the real property of both the city and the State. Of all the devices yet invented for the subjugation of labor by capital, there is none that can claim to be entitled to take precedence of that which has been now proposed for our consideration.

To the general free trade movement there is, however, to be one exception, to wit: those national banks which issue circulating notes. In consideration of the supposed great profit thence resulting, they are to be limited to a charge of seven per cent. Nevertheless, the utmost they thus can make scarcely exceeds one per cent.; enabling them with circulation to make eight per cent., where without it they would make but seven.\* Under existing arrangements they will continue to furnish to the community that machinery

\*A bank being instituted with a capital of \$100,000, that amount is required to be loaned to the Treasury at an interest of five cent., yielding \$5,000. The bank now receives \$90,000 of notes, three-fourths of which it is to be authorized to lend at

seven per cent., yielding \$4,725, the two combined yielding \$9,725. Deducting now the federal taxes, say \$2,000, we have \$7,725 as the total profit, leaving less than one per cent. as the profit of circulation.

in whose absence commerce would almost die away; but will they, can they, continue so to do under the new one that is now proposed? Let us inquire. The National Bank system having now become an absolute monopoly, enabling stockholders to make large profits, other persons anxious to participate in some degree therein have obtained State charters under which they do a business precisely similar to that of those English joint stock banks which now make dividends to the extent of twenty and thirty per cent. Trading almost entirely on the capital of others they offer to depositors large interests, to provide for whose payment loans are made on the most usurious terms. Here, as there, the business is profitable, but the risks are great; it being carried on in utter defiance of the law which limits banks to six per cent. as the legal rate of interest. Real capitalists fear connection with them and, as a consequence, their progress thus far has not been great. Let the usury laws be repealed, and let usury in all its forms be legalized, and we shall see such banks organized on a scale so large as to compel the national banks to follow in the same direction, abandoning the idea of furnishing circulation. Let it once be shown that State banks without it can make larger dividends than national banks with it, and the way will have been prepared for having these latter, subject as they are to the infinite and absurd restrictions and responsibilities of the banking law, to pass gradually from existence. Will that tend to lower the rate of interest? Most certainly not.

Why, however, we are asked, should there be any limit whatsoever thereto? As well might the question be put as to why there should be any limit to railroad fares. Money and the road are both alike mere machinery of exchange, the one aiding in the transfer of property from hand to hand as the other aids in changing it in place. The charge for the use of one is called interest. That for the other is denominated tolls. The farmer, anxious to be enabled cheaply to go to market, demands that there be established a limit to the power of railroad managers, and to some extent that has everywhere been done. That such regulations have to a great extent been set at naught we know; but have we thus been led to the belief that their managers should at once be set free from all restriction? Has it not, on the contrary, produced throughout the com-

munity a feeling that there exists an absolute necessity for providing more effectually against abuses of the power that had been granted; and has not the committee just now adopted rules to that effect far more stringent than had before existed? Has not your Committee on Agriculture, Manufactures and Commerce moved in the same direction, giving us that section of the chapter now before us, which reads as follows:

SECTION 3. No combinations of employers or employed to enable the one to control the business operations of the other, or combinations to maintain arbitrary prices for manufactures, merchandise or the products of labor of any description, or for labor itself (including professional services) shall be allowed. Nor shall any combination of individuals, associations, or corporations to obstruct the free course of trade, or to make or maintain arbitrary rates for freight or passage on rivers, railways, or canals be permitted; and the Legislature shall pass laws to prevent and punish such corporations.

Studying this carefully, its readers cannot fail to feel surprised to see that no mention is here made of combinations for controlling the supply of money and for raising its price. That such combinations exist we certainly know. Year after year we see some half dozen men in the bank of England combining for raising the price of the commodity they have to sell, and thus producing crises each more ruinous than the one by which it had been preceded. Week after week we witness such combinations among ourselves, and with results tenfold more ruinous than any which can result from those having for their object the maintenance of "arbitrary prices for manufactures, merchandise, or the products of labor;" yet does provision for punishment of those so engaged find no place in the section just now read. Year after year is there an increase in the number of persons who need to use the circulating note; in the space over which they are scattered; in the quantity of "manufactures, merchandise, or the products of labor" needing to be exchanged; with steady contraction of the machinery by means of which exchanges may be made, and corresponding increase of the power of combination among the few who now control the movements of the money market; yet is there here no suggestion of punishment for those who are thus from hour to hour increasing the



dangers attendant upon engaging in any enterprise requiring an extended use of credit. So far, indeed, is it the reverse of this, that by the section now under consideration they are expressly told that combine as they may for cramping the money market, for producing distrust, and for compelling holders of merchandise, owners of ships, houses, or land, with bankruptcy staring them in the face as a consequence of failure of submission to the "special contract" system, they may safely do so, free from all danger of interference by the courts.

Of what importance is a combination for raising the price of pork, beef, or cotton, compared with the one now in operation, and that has for months maintained money at so high a price as to have in a great degree paralyzed the whole domestic trade of the Union? Of none whatsoever! Can, then, any benefit result from adoption of even this third section? Assuredly not. It is but an attempt at cutting away decayed branches of a sickly tree, leaving the root in a state of disease which threatens to result in death.

Every purchase and sale involves a contract for the delivery and receipt of money, and as a consequence the amount of these latter is equal to the total of the former, from the purchase of a penny whistle to that of the thousands of millions of bonds that pass annually from hand to hand in our various money markets. The great trade of all is, therefore, that of money; its amount being such as would require for its expression a row of figures whose length would create astonishment in all who saw it. For the carrying on of this wonderful trade, and for supplying the machinery by whose aid alone can circulation be maintained, the Federal government has instituted a monopoly by means of which a few thousand persons are enabled to control at pleasure the monetary movement, and to raise at will the price of the commodity in which they deal. That this may be done with perfect safety to themselves it has now become essential to have the usury laws repealed, giving to the monopolists power unlimited over the price of a commodity the supply of which has been by law confined to them. How this has operated in England the committee has already seen. How it must operate here, freed from all the restrictions by which real estate is there protected, may readily be imagined. As well might the great railroad companies which are now so rapidly monop-

olizing the means of transportation, ask to be relieved from the few restrictions to which they are already subject; alleging that further grant of power had become essential for enabling them cheaply to carry to market the products of the land.

Travelling onward in the direction thus proposed, shall we find ourselves on the road to civilization, or even on that which leads to resumption of specie payments? For answer to this question I would refer the committee to the following paragraph, now a century old, from Turgot, one of the most distinguished economists that Europe has yet produced, to wit:

"We may regard the rate of interest as a sort of level below which all labor, all cultivation, all manufactures, and all commerce cease. It is like a sea spread over a great country of which the mountain summits rise above the waters, forming fertile and cultivated islands. The sea flowing out, the hill-slopes and the plains and valleys gradually appear, covering themselves with products of every kind. To inundate the land and destroy the cultivation, or to restore to agriculture extensive territories, it is sufficient that the water should rise or fall a single foot. It is the abundance of capital that animates to effort; and the low rate of interest is at once the effect and the indication of that abundance."

Than the view thus presented nothing could be more accurate. Reduction in the rate of interest indicates a growing power of labor over capital, and it follows as necessarily consequent upon increase in the variety of demands for human service. Interest is low in England, France, Germany, Holland and Belgium; high in Russia, Turkey, Australia and South America. The tendency of the precious metals is toward those countries where interest is low, and from those in which it is high, as is now shown in these United States. That it may be here reduced we need that a proper supply of the machinery of exchange be allowed to our people, increasing the rapidity of circulation and offering new inducements for the application of capital to the work of developing the enormous mineral and metallic resources of the Union. With every step in this direction there must be a growing tendency toward becoming exporters of cloth and iron, with growing power to retain the precious metals, and to command their use for all the purposes of exchange.

The Pennsylvania capital engaged in manufactures and mining in 1860 was

\$190,000,000 as against \$256,000,000 in New England. By the last census that in the former is shown to have grown to 491; the latter meantime having arrived at 495. The New England product is given at \$994,000,000; that of Pennsylvania being but \$790,000,000; but between the two there is this essential difference, that nearly all the raw material, and very much of the food, of the former comes from abroad, the contribution of New England herself being but little beyond the wages of labor and the profits of conversion; whereas, in the latter by far the largest share is produced from the soil of the State itself. Pennsylvania produces coal and iron, and feeds her people mainly with the products of her soil. She supplies the world with oil. New England buys her oil to sell it again in the thousand forms in which it presents itself among the commodities into which she converts the food, the coal, the iron, the hides and the wool drawn from abroad. How greatly this affects the question under consideration exhibits itself in the fact, that the average proportion borne by raw material to furnish products is shown by the census of 1860 to be more than fifty per cent. Such being the case, it is difficult, as it seems to me, to avoid arriving at the conclusion that the production, and consequent commerce, of our people are much greater than those of all New England; and that our claim to be put on an equal footing with these latter in regard to the money power is founded in reason and in justice. Nevertheless, when Pennsylvania complains that New England, not her equal in productive power, has been allowed thrice as much as has been allowed to her; that New York, not more, certainly, than her equal, has been allowed twice as much; that the two combined have nearly five times as much; she is met, and that invariably, by a combined vote by means of which it has thus far been decided that this monstrous inequality that has been established shall continue to be maintained. As a consequence of this, it is that her farmers and her manufacturers are being subjected to demands of the most usurious kind; and that the mo-

ney-lender is being more and more encouraged to acquire of his victims to aid in perpetuating the mischief by means of an amendment to the Constitution that shall place it wholly beyond the power of the Legislature to give relief, however great the oppression which may be perpetrated.

Pennsylvania has been, and most properly, described as "a blind old giant." Blind she has always been to the magnitude of her powers, and to the slight recognition, by both North and East, of her claims to their consideration. Spoken of, and often treated, as a sort of modern Boeotia, she rarely suggests such claims without meeting a rebuff; and yet it is safe, as I think, to say that no community of whose history we have any knowledge, presents a brighter record. Never having had a witch upon her soil, she has never either burned or hanged one. Never having had a State religion, no man within her limits has ever suffered because of his religious belief. On her soil, and by her people, was commenced that crusade against human slavery whose result is now about to exhibit itself in its abolition throughout the continent and its adjacent islands. Travelling southward, her sons, or their descendants, were first, at Mecklenburg in 1775, to give to the world a declaration of national independence. Throughout the troubled years which followed she performed her entire duty as regarded supplies of men, or of material with which to maintain the contest. In that day of gloom when Washington was about to make, at Trenton and Princeton, a last effort at resistance to the British arms, Philadelphia men, with Morris at the head, furnished, on the instant, all the money needed; and Pennsylvania men were largely conspicuous among the forces which followed him across the Delaware. The war closed, and a Federal Constitution agreed upon in Convention, she—first among the great States and by a two-thirds majority—set the example of its ratification; thus exhibiting a magnanimity which found but tardy followers among the larger States. But for her, it may be doubted if ratification could ever have been secured.\* In the recent war she was first to raise a real

\* The Constitution was signed Sept. 17, 1787, and was to go into operation so soon as nine States should have ratified it. Pennsylvania did so on the 12th of December, the Convention for that purpose having been called by the Legislature on the very day on which advice had been received of its submission to the States by

Congress. Massachusetts followed nearly two months later; but Virginia and New York hesitated until after New Hampshire had, on the 21st of June, 1788, furnished the ninth vote, thereby establishing a Union from which neither of those States desired to remain excluded.

army—those reserves which saved Washington in July, 1861, and of which not ten per cent., as I am assured, returned to their families and their homes unharmed. In the dark days of the autumn of 1862, when apathy reigned throughout the land, she established that Union League which was to the then almost despairing Lincoln and Stanton, as has been since most emphatically stated by the latter, a "Star in the East," harbinger of ultimate success. That League gave to the country more than ten full regiments; simultaneously uniting with its fellow-citizens in feeding and caring for every soldier who passed either south or north, and stimulating the city corporation to those contributions for which, to the amount of \$11,000,000, the people of Philadelphia are now paying interest. Following closely in the footsteps of those admirable Philadelphia women who, in the darkest days of the Revolution, raised among themselves the moneys required for the relief of Washington's suffering companions in arms, their successors, in the dark days of the recent war, gave to works of patriotism and of charity an amount of energy, both physical and mental, that has never been exceeded, and but very rarely equalled.\* With the exception of Rhode Island and Kansas, Pennsylvania sent to the field a larger proportion of her population than any other State. Her coal and her iron furnished the force required for maintaining the blockade, and for constructing and running the machinery by aid of which our whole people were enabled to bear the terrific taxation of the war. Last, but not least, we have the fact that she stands alone in having provided abundantly for the maintenance and education of every soldier's orphan within her limits.

Rightly styled the Keystone of the Union, one duty yet remains to her to be performed, to wit: that of bringing about

equality in the distribution of power over that machinery for whose use men pay interest, and which is known as money. New England, being rich and having her people concentrated within very narrow limits, has been allowed to absorb a portion of that power fully equal to her needs, while this State, richer still, has been so "cabined, cribbed, confined," that her mine and furnace operators find it difficult to obtain that circulating medium by whose aid alone can they distribute among their workmen their shares of the things produced. New York, already rich, has been allowed to absorb a fourth of the permitted circulation to the almost entire exclusion of the States south of Pennsylvania and west of the Mississippi; and hence it is that her people are enabled to levy upon those of all these latter such enormous taxes. To the work of correcting this enormous evil Pennsylvania should now address herself. Instead of following in the wake of New Jersey and Connecticut, thereby giving to the monopoly an increase of strength, let her place herself side by side with the suffering States of the West, the South, and the South-west, demanding that what has been made free to New York and New England shall be made equally free to her and them. Let her do this, and the remedy will be secured, with such increase in the general power for developing the wonderful resources of the Union as will speedily make of it an iron and cloth exporting State, with such power for retaining and controlling the precious metals as will place it on a surer footing in that respect than any of the powers of the Eastern world. The more rapidly the societary circulation and the greater the facility of making exchanges from hand to hand, and from place to place, the greater is the tendency toward reduction in the rate of interest, toward equality in the condition of laborer and employer, and

\* It was the women of Philadelphia who in that dark hour of peril and sorrow (the autumn of 1780) raised by voluntary contribution among themselves a large fund—singularly large in view of everything—for the relief of Washington's suffering soldiers at camp. The honored list of these noble women is part of Philadelphia's recorded and traditionary story, and yet every one seems now to have forgotten it.

It lies before us as we write, and there we find names still proudly borne by living descendants, which ought to be remembered now—the names of Esther

Reed, of Bache, of Francis, M'Kean, Rush, Hutchinson, Morris, Shippen, Gratz, M'Call, Montgomery, Willing, Sergeant, and others still surviving. There, too, we find the gift of a thousand dollars in coin from the Countess of Luzerne, and the humble 7s. 6d. of the colored woman Phillis! The fund raised amounted to \$300,000 in the only currency then available—equivalent to about \$10,000 in gold. Now that precedents for generosity are sought for, our Philadelphia friends will pardon us for reminding them of this forgotten one.—*New York Tribune*.

toward growth of power to command the services of all the metals, gold and silver included.

It will be said, however, that adoption of such measures as have been indicated would tend to produce general rise of prices; or, in the words of our self-styled economists, would cause "inflation." The vulgar error here involved was examined some thirty years since by an eminent British economist, and with a thoroughness never before exhibited in reference to any other economic question whatsoever; the result exhibiting itself in the following brief words of a highly distinguished American one, published some twelve or fifteen years since, to wit:

"Among the innumerable influences which go to determine the general rate of prices, the quantity of money, or currency, is one of the least effective."\*

\*Colwell: *Ways and Means of Payment*, Philadelphia, 1859.

NOTE.—"But it is said, and in fact truly, that usury laws are vestiges of the times when the principles of commercial polity were wholly unknown; when the Legislature extended its interference with the rights of individuals to almost every act of private life; when the prices of bread, cloth, leather, wine, and other necessities of life were fixed by statutes. It does not follow, however, that because these laws first originated in the days of political darkness, when numberless legal abuses also had their origin, they should therefore be expunged from the statute book. On the contrary, it is contended by many great and good men that because the usury laws have been hallowed by the wisdom and experience of our ancestors they ought not to be abolished.

"The venerable and learned commentator upon American law, the late Chancellor Kent, in a very lucid opinion which he gave in a usury case then before the court of errors of the State of New York, an able extract of which is given in a previous chapter, after examining the subject at considerable length and referring to the history of the laws against usury from the earliest periods, asks: 'Can we suppose that a principle of moral restraint of such uniform and universal adoption has no good sense in it? Is it altogether the result of monkish prejudice? Ought we not rather to conclude that the provision is adapted to the necessities and the wants of our species, and grows out of the natural infirmity of men, and the temptation to abuse inherent in pecuniary loans?' He then proceeds: 'The question of interest arises constantly and intrudes itself into almost every transaction. It stimulates the cupidity for gain and sensibly affects the heart, and gradually presses upon the relation of debtor and creditor.

Since then, we have had a great war in the course of which there have been numerous and extensive changes in the prices of commodities, everyone of which is clearly traceable to causes widely different from those to which they so generally are attributed. Be that, however, as it may, the question now before us is one of right and justice, and not of mere expediency. North and east of Pennsylvania, eight millions of people have been allowed a greater share of the most important of all powers, the money one, than has been allotted to the thirty-two millions south and west of New York; and have thus been granted a power of taxation that should be no longer tolerated. The basis of our whole system is to be found in equality before the law, each and every man, each and every State, being entitled to exercise the same powers

Civil government is continually placing guards over the weaknesses, and checks upon the passions of men; and many cases might be mentioned in which there is, equally with usury laws, an interference of the lawgiver with the natural liberty of mankind to deal as they please with each other. But no person doubts of the necessity and salutary efficacy of such checks. On the same principle that unlimited usury may be permitted, the law ought to allow the creditor to insert in his bond a provision for compound interest whenever the stipulated interest becomes due and is not paid. Nay, parties ought to be allowed to agree that if the condition of a bond be not performed at the day, the penalty shall not only be nominally forfeited, but literally exacted. I should apprehend that if these things were to be permitted there would not be strength enough in the government to support the administration of justice. It is an idle dream to suppose that we are wiser and better than the rest of mankind. Such doctrines may be taught by those who find it convenient to flatter popular prejudice; but the records of our courts are daily teaching us a lesson of more humility. And I apprehend it would be perilous in the extreme to throw aside all the existing checks upon usurious extortion, and abolish and traduce a law which is founded on the accumulated experience of every age.'

"The Roman Commonwealth, if we may place reliance upon its entire history, tried every experiment on this interesting subject. The Romans had no law regulating the interest of money, and left parties to their own contracts until the law of the Twelve Tables, according to Tacitus, or the law of the Tribunes in the year of Rome 398, according to Montesquieu. The consequence was unending quarrels between the patricians and plebeians,

that are permitted to other people, or other States. If the Union is to be maintained, it can be so on no terms other than those of recognition of the equality that has here been indicated. To the work of compelling that recognition Pennsylvania should give herself, inscribing on her shield the brief words, *flut justitia ruat cœlum*—let justice be done, though the heavens fall!

Such being the facts, they are recommended to the careful consideration of the committee in the event of its being determined that the question involved in this first section is entitled to a place in the organic law. Well convinced myself that it has no such claim, and that it should be left to the Legislature, I hope that the section itself will be voted down.

Mr. BIGLER. I desire to say with reference to the paper of our venerable friend, (Mr. Carey,) though I know that in the committee of the whole no such measure as I would propose can be

adopted, while there is much in it to which I cannot assent, there is so much in it that is good and useful and agreeable that if we were in Convention, I should move the publication of five or ten thousand extra copies for the use of this Convention. I make that remark as expressing my gratification with the paper.

Mr. DE FRANCE. I now move in the third line to add after the word "higher" the words "not exceeding ten per cent." I think we ought to limit it somewhere, and ten per cent. it seems to me would be reasonable. I did not hear all the remarks of our distinguished and venerable friend from Philadelphia, but—

The CHAIRMAN. The Chair will say to the gentleman from Mercer that his motion would not now be in order because there is a pending amendment and this is not an amendment to that amendment.

Mr. DE FRANCE. I withdraw it then for the present.

and popular secessions to the mons sacer, in which one party pleaded the obligation, and the other the severity of their contracts. Interest was then reduced to the smallest allowance, and finally abolished, which led to a still more frightful usury, until at last the emperors were obliged to allow, but regulate and limit the charge of usury. So true it is, according to the President Montesquieu (*Esprit des Loix*, liv. xxii., ch. 21, 22,) who has discussed this subject at large, that extreme laws produce extreme evil: *le loix extremes dans le bien font vaitre le mal extreme*. The Romans at one time had no laws against usury, and at another time they allowed no interest; and these are the extreme laws which this celebrated civilian condemns.

"Lord Redesdale said in 1803 (1 *Sch. & Lef.* 195, 312,) many years after Jeremy Bentham, to whom the learned counsel referred for an able defence of usury, had first published his letters, that the statute of usury was founded on great principles of public policy. It was intended, he said, to protect distressed men by facilitating the means of procuring money on reasonable terms, and by refusing to men who sit idle as high a rate of interest, without hazard, as those can procure who employ money in hazardous undertakings, or trade and manufactures. I trust that theoretic reformers have not yet attained on this subject any decided victory over public opinion. Mr. Bentham contends that we ought not so much as to wish to see the spirit of project in any degree repressed. It may be so; but I hope I may be permitted to wish that the first experiments of his projects may not be made within these walls. The statute of usury is constantly interposing its warn-

ing voice between the creditor and the debtor, and teaches a lesson of moderation to the one, and offers its protecting arm to the other. I am not willing to withdraw such a sentinel. I have been called to witness, in the course of my official life, too many victims to the weakness and to the inflamed passions of men. (Dunham v. Gould, 16 *Johns. R.* 367, 378-380.)

"The venerable Chancellor is regarded as very competent authority upon the question here discussed. His sagacity and great learning particularly fitted him not only to give a true exposition of any given enactment, but to judge of the necessity and propriety of the enactment itself. From this opinion it is quite clear that in the judgment of this eminent jurist the same necessity existed in his day for usury laws as that which called for them in earlier times, and that he did not sympathize with the sentiment that such checks are prejudicial to the exercise of enterprise, or stumbling-blocks in the way of commercial advancement. And it may be added that in most cases the objections to these laws emanate from money-lenders themselves, and they are usually most prominent in making efforts to obtain their repeal; and further, that it is the daily observation of very discerning business men that no person can continue for any considerable length of time in any legitimate calling who is in the constant habit of borrowing money at exorbitant interest; his failure is a foregone conclusion, and it is only a question of time. The probabilities, therefore, are that these legal restraints will still be continued in many or most of the American States, and that the time is at least far distant when the system will be permanently abandoned."—*Tyler on Usury*, Albany, 1873.

Mr. EWING. Mr. Chairman—

Mr. KNIGHT. I ask for a call of the House. I do not not think there is a quorum present.

The CHAIRMAN. The Clerk will count the members present. [After a count.] There are but sixty-two members present.

Mr. J. PRICE WETHERILL. I move that the committee rise and report that fact to the House.

The CHAIRMAN. It is moved that the committee rise and report to the House that there is not a quorum present. There is a quorum now present.

Mr. J. PRICE WETHERILL. I withdraw the motion.

Mr. EWING. I had the honor to be a member of the Committee on Agriculture, Mining, Manufactures and Commerce, and I dissented from the report made by that committee, but did not file a dissenting report in Convention, for two reasons. One is, that during the time these matters were under discussion for most part in that committee, I was engaged on a different committee that took all the time I had, and I did not therefore feel like going into any lengthy detail on it. I also thought it was unnecessary for me to do so. My great objection to this section is that it is a matter entirely for legislation; and not only that, but it is a matter of exceedingly doubtful legislation if we were the Legislature. The amendment that has been offered by the gentleman from Juniata (Mr. Reed) and the amendment suggested by my friend from Mercer (Mr. De France) show still further that it is legislation on which there is a great difference of opinion, and it would be a very dangerous thing for us to undertake to incorporate in the fundamental law of the land a provision of this sort on which wise men differ so widely in different States and differ so much here.

In regard to the second section, I think it is already sufficiently provided for by the report of the Committee on Education, which has been adopted in committee of the whole.

The third section is one that is emphatically for the Legislature and is legislation of a very doubtful character. It would be in a legislative act, I think, useless to attempt to do what is proposed in that provision.

The fourth section is the only one that I would have any doubt in regard to; that is, directing the Legislature to provide appliances in manufactures and mines, for the protection and safety of la-

borers. But with the sections already adopted in the article on legislation, and on other subjects, my opinion is that the Legislature will have ample power to make all these necessary provisions, and that it is not necessary to incorporate an additional section in the Constitution for that purpose.

The fifth section in regard to the manufacture and sale of carbon oil is so completely a matter of legislation that I do not think it is necessary to do more than state the subject of it; and in fact at the last session of the Legislature a few days after this report was made, an act was passed which I suppose to be very complete and thorough on that subject.

As to the sixth section, I suppose the Legislature has now ample power to do all that is necessary to be done on that subject; that is, providing for an equitable assessment of benefits in favor of mine owners for improvements. I think the Legislature has all necessary power on that topic.

Believing as I do, then, that all these matters are matters of legislation and that most of them, especially the first and third sections, are of very doubtful propriety as matters of legislation, I shall vote against all the sections and trust that they will all be voted down here and left to the Legislature.

Mr. KNIGHT. Mr. Chairman: In the absence of the chairman of this committee, (Mr. Finney,) and there scarcely being a quorum of the House present, I move that the committee rise. ["No!" "No!"] I should like to make some remarks on this subject to-morrow.

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, thirty, less than a majority of a quorum.

Mr. LAWRENCE. We should all be very glad to hear our friend from Philadelphia if he would proceed now.

Mr. CURRY. Mr. Chairman: A gentleman who is a member of the committee is absent, the delegate from Schuylkill, (Mr. J. M. Wetherill,) and I am free to say that he took more interest in the mining department than any other member or all the other members put together. I am sure if he was here he would give us some very valuable information, and throw a great deal of light upon the subject.

Mr. LAWRENCE. Will the gentleman from Blair tell me, if he is not here whose fault it is?

Mr. CURRY. I am not able to answer that question.

Mr. MCLEAN. I would like to state to the delegate that he is absent on a patriotic visit to Gettysburg to attend the celebration of the association of the Pennsylvania Reserves.

Mr. CURRY. I hope the report will be postponed until those members of the committee who are absent return. ["No!" "No!"]

Mr. BOYD. I do like to observe courtesy where nothing can be lost by it. I therefore suggest that the committee rise and that we take up some other subject and dispose of this after we get through with the next subject.

Mr. J. PRICE WETHERILL. Mr. Chairman: I hope also that the committee will rise for this reason: Heretofore in the absence of the chairman of a committee we have always extended that courtesy to him of waiting until he is present, in order that he may defend his own report. The chairman of the committee who has charge of the report and who is charged by his fellow members with defending the report, is not in his place, and it does seem to me, inasmuch as that is the case and inasmuch as this is an important matter that, although we have had a very exhaustive essay against the report, he or some of the other members of the committee may have something to say on the subject, and I do think in all fairness both sides should be heard. I myself may not have anything whatever to say on this subject; but I think in courtesy to the chairman of the committee who has presented a report of this character, both sides should be heard, and it seems to me that he should be heard in favor of his report.

Mr. NILES. Mr. Chairman: I undertake to say that if we postpone our work from day to day to accommodate gentlemen upon committees, the centennial celebration in 1876, will find us in good working order. Mr. Finney, the chairman of this committee, should be here; and I hope the delegates from the city will remember that the delegates from the country have been here for six months, and perhaps will be here six months longer. We have had a four or five hours' sitting to-day and we can just as well sit another hour or two as not. It is very convenient for delegates who are close at

home and who can attend to their business and neglect nothing by our being here, to adjourn from time to time by reason of courtesy; but, sir, it is not so well for country delegates three hundred or four hundred miles from home, neglecting their business, trying to do their duty here, and if we adjourn to-day and from day to day by reason of the absence of delegates or members of the committee, our work will never be accomplished.

While I am as anxious to hear the gentleman from Philadelphia (Mr. Knight) as any gentleman on this floor, I hope to hear from him to-night. He is here to discharge his duty and it is not the fault of this Convention that the chairman of this committee is absent. I hope we shall perform our duty, those of us who are here, and let those who are absent take the consequences of their absence.

Mr. LILLY. Mr. Chairman: This subject has been postponed twice already on account of absence.

Mr. BOWMAN. Mr. Chairman: I rise to a point of order. My point of order is that when we go into committee of the whole nothing but just the question before that committee can be considered or debated.

The CHAIRMAN. The Chair is of opinion that the committee may consider whether they will rise or not.

Mr. C. A. BLACK. That question is not debatable.

Mr. LILLY. This subject has been put off two or three times on account of the absence of the chairman of the committee. The committee rose, I think, when we were in committee of the whole, on this subject before on that very account. I believe the chairman of the committee is in this city and has been for a week, and I do not know why we should be putting off the business of this Convention and keep members here, as the member from Tioga said, for a year, dependent on the caprice of some delegates who are not here to vote. I am willing to extend courtesy, but they should be here.

Mr. DARLINGTON. I rise to a point of order. The point is that when a motion has been made that the committee rise, it is not debatable.

Mr. WORRELL. Is that motion now before the committee?

The CHAIRMAN. The motion that the committee rise is not debatable.

Mr. WORRELL. Is there such a motion before us?

The CHAIRMAN. There is a pending motion that the committee rise, report progress, and ask leave to sit again.

Mr. MACVEAGH. I rise to a point of order. That motion was voted down.

The CHAIRMAN. The Chair thought it was renewed.

Mr. CURRY. I renew the motion that the committee rise, report progress, and ask leave to sit again.

The motion was not agreed to, there being on a division: Aye twenty-four; less than a majority of a quorum.

Mr. KNIGHT. I admit that the consideration of this report has been postponed once in consequence of the absence of the chairman of the committee (Mr. Finney;) and if there is a quorum present, I will go on now and make the few remarks I intended.

[Several delegates. "Go on."]

Mr. KNIGHT. It is with great diffidence that I rise to say anything on this subject, and particularly after the remarks of my distinguished colleague from Philadelphia (Mr. Carey)—a gentleman who is not only known in this country, but in almost every country where books are printed, because his works have been translated in the languages of various other countries. But as I am a member of the committee that has made this report, in the absence of the chairman I deem it proper that I should say something in its favor. I recollect once hearing of a speech made by a member of Congress, which was rather shorter than mine will probably be. He rose and said: "Mr. Chairman, as I have had the honor of offering this resolution, I think it ought to pass," and sat down. [Laughter.] I do not intend that my speech shall be quite as brief as that, but I shall occupy as little time as possible.

As an allusion has been made to Shylock in this connection, I will merely state in advance that I am not an owner of bank stock of any kind, and have not been for many years. I advocate this section purely and entirely because I believe it to be for the best interests of the citizens of the State of Pennsylvania, and for no other reason whatever. I am not much of a borrower or lender of money; but I believe that wherever there is an abundance of anything, there the borrower has a better chance to make favorable terms than where it is scarce. It is so with all articles of produce and manufacture, and I think the same rule will apply to money.

The main question is, whether you can

bring more money to the city of Philadelphia and the State of Pennsylvania by having a liberal fixed rate of legal interest, a rate perhaps equivalent to that of the majority of the States, or by having a lower rate of legal interest. My conviction is that you will bring a great deal more capital here by having a liberal legal rate of interest, a rate certainly not below that which is legal in the surrounding States; and as we have a great many special laws in the State allowing a favored few to charge almost any rate of interest, why should we not have a general law placing all our citizens upon an equality? We know very well that the law of the State of Pennsylvania regarding the legal rate of interest is violated in this city and State ten thousand times a day with impunity, and you scarcely hear of one case in a year having been brought up before the courts for usury. It is a common question on Third street and at the Exchange, "what can you loan your balance for to-day?" and the reply is, "nine, ten, twelve, or fifteen per cent.;" and it is done between merchants, manufacturers, brokers, bankers and the entire community. If my friend (Mr. Biddle) who has great practice in our courts, were present, I would ask him, and in his absence I ask the gentlemen around me doing business at the bar of Philadelphia, how many cases do they know of that have been pressed before the courts for taking usurious interest within the last three or five years? They do not respond because there have been very few such cases. Therefore, the law as it stands to-day is, to a great extent, a dead letter.

Mr. DARLINGTON. If the gentleman will allow me, I will answer that so far as regards my own county, the result has been that taking usurious interests has become quite unhealthy and uncomfortable, by reason of many refusals to pay, and the court sustaining the refusal.

Mr. J. PRICE WETHERILL. If my colleague will pardon me, I should like to ask the gentleman from Chester whether money loaned on mortgage is not, as a rule, loaned at a discount on that mortgage which would be equivalent to seven per cent.

Mr. DARLINGTON. I do not think I am the proper person to answer the question.

Mr. KNIGHT. I will answer that question in a moment.

Let me take the case of the North Pennsylvania railroad company. They have a road to-day that is in first-rate credit. I



happen to know about its condition and financial interests. They have a six per cent. bond, the interest upon which is due on the first of July, which is convertible into stock. That bond is selling to-day at about ninety-six per cent. They have a seven per cent. bond, not convertible into stock, which is a second mortgage, the six per cent. bond being the first. That bond is selling at about 100½; that is ½ per cent. above par. Then they have, by special act of the Legislature, (which any institution can get as I shall show before I conclude,) a ten per cent. mortgage bond, which is selling to-day at about 110 or 111. Thus it will be seen that the Legislature will grant the right not only to issue seven per cent. bonds, but to make special contracts to issue ten per cent. bonds.

You can go into the market to-day and buy first-rate six per cent. mortgages at ninety cents on the dollar. Messrs. Jay Cooke & Co. told me the other day that they had bought \$40,000 of mortgages that morning at eighty-nine cents on the dollar. If those mortgages paid seven per cent. interest they would bring par. What disadvantage is it to the owner of these mortgages? It is a disadvantage of eleven per cent. because he is not allowed to make a mortgage at seven per cent., and make it legally, in this State.

MR. CAREY. Has not the Board of Trade of this city determined that it is inexpedient to have any increase in the quantity of money, that very article that you say is so scarce; that money should be kept as scarce as it is now and prices kept up?

MR. KNIGHT. I will answer that while I have great faith in the Board of Trade, I do not consider them infallible, and on this point I differ with them very much.

MR. CHAIRMAN, of course I have not that command of language with which to express myself that my colleague from Philadelphia (Mr. Carey) and many other gentlemen on this floor have; but in my crude way I think the force of language is to be understood. I intend to make myself understood if possible.

Now, take the case of contracts made with third parties. Suppose I want to borrow \$50,000 to-morrow, and I have first class collaterals. I have \$60,000 or \$70,000 of first-class coupon mortgage bonds of a railroad company, or any good collateral that may be satisfactory to the lender. I am obliged under our present law to go to a broker who has a license, and in the first place I pay him a quarter of one per cent,

which is \$125. Then he takes my collaterals, \$50,000, and he wants in addition \$10,000 or \$20,000 margin, and he goes to somebody and gets the money, if he does not loan it himself, and he reports to me that he has to pay eight, nine, ten, or twelve per cent for it. I am obliged to submit to it and pay him a commission besides. My note becomes due and payable at the bank, and I get the notice. The bank knows no one when the note comes due but the drawer of the note. I go there to pay it, and I do pay it. Then I ask for my collaterals. It is always understood that the broker is not allowed to disclose the name of the party who loans the money, because nine times out of ten it is institutions—they are loaning it against the law, and they will not allow themselves to be reported to the borrower of the money. Sometimes I may find that these collaterals have been in the hands of a party whom I would not trust with a load of coal ashes, and I never get them back, not only my \$50,000, but the \$10,000 or \$20,000 margin. I have known of such cases. But, sir, if this usury law was done away with, I could go and meet the man who had the money to loan, face to face, and make my contract with him. Under this section, if I made a special contract beforehand, it would be legal, for it provides that

"In the absence of special contracts, the legal rate of interest and discount shall be seven per centum per annum, but special contracts for higher or lower rates shall be lawful."

The latter clause was placed there at the suggestion of the President of the Convention, Mr. Meredith. It may not be necessary because every one would know that a lower rate of interest would be legal, but it was thought proper that it should be inserted to give all parties notice, and it could do no harm.

With regard to borrowing money, I say that if I go to meet the party that has it to loan, I should be able to make my own contract, without being subject to one hundred and twenty-five dollars commission, and without, in many cases, having my collaterals placed in the hands of parties that are unsafe. You may go to look for the party who has your collaterals, and he may be in Brazil or some other country, in South America or elsewhere, and you never get your collaterals back again, and you are bound for your note where the note is in bank, and it has to be paid. I look upon merchan-

dise, manufactured goods and capital as standing exactly in the same position. If there is a surplus of agricultural products, the price is lower; if there is a surplus of imported or manufactured goods, the price is lower. Just so with money. The main question is, will this section tend to bring more money into the State? I contend that it will, and I may have to allude to a transaction of my own to show it. I believe to-day that if we had this provision in force, we should have in this State one hundred millions more capital than we have now. I have not the slightest doubt of it. Some years ago I bought a property at the corner of Second and Chestnut streets, and built the Corn Exchange bank building. Subsequently I bought a property adjoining it, but a gentleman by the name of Tyler had a mortgage of eight thousand dollars on it. He requested as a special favor that I would not pay it off, but let it remain. I said, "well, I can use the money, and if agreeable I will allow it to remain." I afterwards sold the whole establishment to the Corn Exchange National bank, and they wanted to pay the mortgage off, and asked me if I would see friend Tyler, a Quaker gentleman who lived on Fourth street, and get him to take the money. I called on him and he said, yes, he would be very glad to take it, for within the last eighteen months the State of New Jersey had increased the legal rate of interest to seven per cent., and that he had already invested in eighteen months about one hundred and fifty thousand dollars there where he got seven per cent. on equally good security. Gentlemen can judge for themselves. There were one hundred and fifty thousand dollars gone out of the capital of the city of Philadelphia and the State of Pennsylvania to New Jersey, because of our legal rate of interest being six per cent. Our railroad companies can go to the Legislature and get a law to issue bonds upon any rate of interest, and can sell those bonds at any discount. You can buy good bonds to-day at seventy-five per cent., bearing six per cent. interest, and all good seven per cent. collaterals are selling to-day at about par. Neither the coupon nor registered bonds of the Lehigh Valley railroad, the North Pennsylvania railroad and many others are to-day bringing over par. Why? Because the people ask for seven per cent. interest; and I believe, as I said before, that it would very much tend to increase our capital if we could make the

legal rate of interest equal to what it is in the other States.

The gentleman from Philadelphia has spoken of the high rate of interest charged in London. We know very well that under the laws of the State of New York within the last five or six months the people of New York have paid very frequently as high as one-eighth, one-fourth or one half per cent, a day for money. Why? Because they are restricted there to the legal rate, which is seven per cent.

To show that the Legislature are passing bills which tend to give all that choose to apply there, a law to suit themselves. I will just read from the charters of some of the banks which have been chartered within the last few years. The charter incorporating the Peoples' Bank reads as follows:

"The said bank shall have power and may borrow and loan money for such periods as the said bank may think proper, may discount any bill of exchange, foreign or domestic, promissory note, or other negotiable paper, and the interest may be received in advance, and shall have the right to hold in trust or as collateral security for loans or advances or discounts, estate, real, personal, and mixed, including the notes, bonds, obligations and accounts of the United States, individuals, or corporations; and to purchase, collect, and adjust the same, and dispose thereof for the benefit of said bank, or for the payment of the debts as security for which the same may be held, in any market of the world, without proceedings in law or equity, and for such price and at such terms as may be agreed upon by such corporation and the parties contracting therewith.

Is not that broad enough? That goes far beyond the article we are asking to have passed in this Constitution. The acts incorporating the following banks are similar to the above act incorporating the People's bank, viz: The Twenty-second Ward bank; the Bank of America; the Market bank of Philadelphia; the Butchers' and Drovers' bank of Philadelphia; the Franklin bank of Philadelphia. (For the latter see act of April 1, 1870, pamphlet laws 1870, page 736, section 4.)

"The said bank shall have power and may borrow or loan money for such period as the said bank may think proper, may discount any bill of exchange, foreign or domestic, promissory note or

other negotiable paper, and the interest may be received in advance, at such rate as may be agreed upon by the parties."

Again: "SECTION 6. The said bank may receive money to keep for its depositors either with or without interest payable thereon, and may buy and sell bullion, negotiate bills of exchange, bills of lading, bonds and stocks of all companies of the State and of the United States, or other good and sufficient securities at such rates of interest as may be agreed upon by said bank and the depositors."

These special privileges have been granted to everybody that has wanted them. Why should not the community have them generally, and let money come in here and develop the resources of our State?

Mr. MACVEAGH. I wish to correct the gentleman. He said that those privileges were being given to everybody who wants them. They have been steadily vetoed this year. No such charter as that or anything like it has passed Governor Hartman.

Mr. HARRY WHITE. The delegate will allow me to explain. The Legislature for the last four or five years has refused to pass any bills with a clause in allowing the corporation to lend on such terms as may be agreed upon, and, furthermore, the People's bank and certain other banks, by supplement, had the power to lend at such rates as might be agreed upon, taken away from them.

Mr. KNIGHT. The People's bank was incorporated on the twenty-fifth of February, 1870; the Franklin bank, April first, 1870; the Manayunk bank, June, 1871; the Petroleum bank, November twentieth, 1871.

Mr. DARLINGTON. Will the gentlemen allow me to ask whether those charters of incorporation authorized these banks to borrow money?

Mr. KNIGHT. Yes, sir.

Mr. DARLINGTON. Does it say for what purpose they may borrow?

Mr. KNIGHT. To loan again at any rate they can get. Mr. Chairman, I am afraid I am exceeding my time. ["Go on;" go on.]"

We all know that when money is wanted in large quantities wise people go to get it where it is to be found. Therefore you will find all the institutions and corporations with any kind of credit seeking the London market for money. Why is there so much money there? In my

judgment just because there is no usury law. By reference to Fisher's Digest, volume 4, it will be seen that the several acts relating to usury in force in Great Britain and Ireland, and all existing laws against usury, were repealed with a saving clause that nothing should prejudice or affect the rights or remedies of any person or diminish or alter the liabilities of any person in respect of any transaction previous to the passing of the act. That act was passed on the tenth of August, 1854, and it remains so up to this day. The great power that rules the whole world with money, London, is where this law is in force.

Mr. CAREY. Will the gentlemen allow me to ask whether there is any country in the world in which so much money has been raised in the last few years as in France, and is not the usury law the most stringent possible there? It is ten-fold more stringent than ours, and yet they have raised more money within the last five years than has ever been raised in the like period in any country of the world except our own.

Mr. KNIGHT. But we raised our money at 7.30 per cent., and France, if I am not mistaken, has raised a great deal of her money from England. I cannot say positively, but it is my impression that she obtained a great deal of the money from England. Now, I contend, Mr. Chairman, that we are laboring under great disadvantages in this State by being restricted to a lower rate of interest than they are in the other States of this Union. The gentleman who spoke this afternoon stated that previous to 1864 there were ten States that had some modifications of the usury laws or had a rate of interest above our legal rate. The gentleman now suggests that all of them were slave States, with, perhaps, one exception.

Mr. CAREY. All slave States or extreme western States.

Mr. KNIGHT. Only ten in all. Now, I want to show the progress in feeling and sentiment that this country has made since 1866. This subject may be dry, ["No; go on,"] but it is certainly very important, because money is an institution that will perhaps never go out of fashion. [Laughter.]

In Alabama now the legal rate of interest is eight per cent.; in Arkansas the legal rate of interest is six per cent., but parties may agree verbally or in writing for any rate and the plea of usury will not be entertained by the courts, and this in-

dependent of the place where the contract is made or is payable.

Mr. EWING. Allow me to ask the gentleman a question. Is his information that that has rendered money plenty and cheap in Arkansas or Alabama?

Mr. KNIGHT. I have not come to that point yet. In California parties may agree in writing for the payment of any rate of interest whatever, compounded or otherwise, and it shall be allowed until entry of judgment, and on judgments seven per cent. is allowed. Ten per cent. is allowed where no rate is fixed by the parties or no agreement is made in writing. In Colorado where there is no agreement between the parties, the legal rate of interest is ten per cent., but the parties may stipulate for the payment of a higher rate of interest, and any such stipulation contained in any instrument of writing may be enforced in any court of law or equity in the territory. In the District of Columbia the legal rate of interest is six per cent., but it may be higher by agreement not exceeding ten per cent. In Florida eight per cent. and in special contracts any rate may be charged. In Georgia it is seven per cent. and a bill is now pending, having passed the State Senate, to allow a higher rate of interest on special contracts. In Illinois six per cent. is allowed where no rate is specified. For money loaned parties may agree on any rate not exceeding ten per cent. It may be argued here that this is not a proper article to go into the fundamental law, and to meet that I will say that in the State of Illinois the Legislature has no power to make any law changing the article in the Constitution, and the article is in the Constitution of the State.

Mr. CAREY. Has not Illinois embodied in her Constitution a provision that no bank can be established for any purpose without a general vote of the people?

Mr. KNIGHT. I am only quoting the law as it stands. I have no doubt there are a great many improper things in many transactions.

In Indiana the legal rate of interest is six per cent.; but if a higher rate be contracted for in writing it can be recovered, not exceeding ten per cent. Where interest not exceeding ten per cent. has been voluntarily paid, it cannot be recovered back. In Iowa six per cent. is the legal rate, but parties may agree in writing on any rate not exceeding ten per cent. In Kansas the legal rate is seven per cent., but parties may agree in writing on any greater rate not exceeding twelve

per cent. In Louisiana the legal rate is five per cent., but conventional interest may be as high as eight per cent. per annum by agreement in writing. In Maine the legal rate of interest is six per cent., but there is no limit to the rate of interest which may be fixed by contract. That is just what we ask for here.

In Massachusetts six per cent. is the legal rate of interest, when there is no agreement for a different rate, but any rate of interest may be received or contracted for between the parties. That is a repeal of the old usury laws in Massachusetts.

In Michigan the legal rate of interest is seven per cent. Parties may agree in writing for any rate not exceeding ten per cent. on loans of money. If the contract sued on bears more than seven per cent., the judgment when rendered will bear the same rate as the contract or obligation sued on. The penalty for the taking of usurious interest is a forfeiture of the excess, but no action can be maintained to recover back such excess after the voluntary payment of the same.

In Minnesota the legal rate of interest is seven per cent. Parties may agree in writing on any rate not exceeding twelve per cent. There are no usury laws there.

In Mississippi the legal rate is six per cent. Parties may agree in writing on any rate not exceeding ten per cent. If usurious interest be stipulated for, the only effect is to avoid the excess of interest over the legal rate.

In Missouri the legal rate of interest is six per cent., but parties may agree in writing upon any rate not exceeding ten per cent.

In Nebraska ten per cent. is the legal rate; but not greater than twelve per cent. may be received on express written contracts. When more is exacted, the contract remains good as contractable, but the interest is forfeited beyond twelve per cent.

In New Jersey seven per cent. is legal; in New York seven per cent.; in North Carolina six per cent., but in the latter State parties can make special contracts up to and including eight per cent. for money. The only penalty for illegal interest is the loss of the whole interest.

In Ohio the legal rate is six per cent. Special contracts may be entered into stipulating for the payment of interest at a rate not exceeding eight per cent. If more be reserved the excess is void.

In Oregon eight per cent. is the legal rate, but parties may agree in writing to a rate not exceeding twelve per cent.

In Pennsylvania six per cent.; and a contract for a higher rate is not binding. A bare purchase of a bond or note may be made at any discount without being usurious. You cannot go and borrow money under our laws unless you have a broker, if you pay a higher rate, and have it legal; but you can make a mortgage or issue a bond, and sell it at fifty cents on the dollar if you desire to do so; you are on the backward track and have no right to go on the forward, upward track.

In Rhode Island the legal rate of interest is six per cent, when no rate is agreed upon by the parties. Any rate fixed by the contracting parties is legal.

In South Carolina in all cases of contracts for the legal hiring, lending or use of money, wherein by the terms of the original contract no special rate of interest shall have been agreed upon in writing, signed by the parties, the legal interest is at the rate of seven per cent. per annum. The usury laws are abolished and parties may contract without limit.

In Tennessee the general rate of interest is six per cent., but recently the law has been so modified as to allow ten per cent. to be specially contracted for.

In Texas eight per cent. is the legal rate, and the new Constitution does away with usurious restrictions.

Maryland has her legal rate of interest fixed in the Constitution also. It is said that the legal rate of interest is fixed by the Constitution. The Legislature may change it, but it is mentioned in the Constitution.

In Wisconsin seven per cent. is the legal rate. Parties may agree, in writing, on any rate not exceeding ten per cent.

Mr. Chairman, our distinguished friend has stated that in 1866 there were only ten States in this Union that varied from our own State. Now, we find from 1866 to 1873, only eight States that have not gone forward in the drift of progress and changed their rate of interest and made a liberal rate to suit the agricultural interests and the wants of the country over these thirty-one States. In 1866, there were only ten. I want to show that the people all over the country are thinking of this subject, and that they have in their Constitutions, and by their laws made by the Legislature, repealed their old laws to give people an opportunity to come

forward with money and bargain face to face. All men that have money ought to be capable of taking care of it; if not, let there be guardians or trustees appointed for them; and if they have not wisdom enough to do that, they have not wisdom enough to keep their money, let the Constitution put all the restrictions it may around them.

I speak of this entirely for the interests of this State. I have not the slightest selfish motive or view in it. I never expect to become a heavy borrower or loaner of money. The little surplus that I have, outside of enough to conduct my business, I generally put into some real estate or improvement that will tend to build up the city in which I live and the State of which I claim to be a citizen, and therefore I wish to throw away any such impression which may possibly exist.

We know further that the national bank law is that the national banks located in any State or Territory shall be at liberty to charge the rate of interest allowed in the State where they are located. The national banks of New York are at liberty to charge to their customers seven per cent. The national banks of Pennsylvania are at liberty to charge only six per cent. People who want to establish a national bank will go where they have a chance of getting one per cent. more for their money. The great balances of the west, particularly that seek an eastern city where they can draw upon their funds, flow to the city of New York. Why? Because the banks of New York

Mr. CORBETT. I should like to interrupt the gentleman. Do the national banks of Philadelphia confine themselves to six per cent?

Mr. KNIGHT. Entirely so.

Mr. CORBETT. If they do, they do more than they do in the rest of the State.

Mr. DARLINGTON. Not more so than we do in Chester county.

Mr. KNIGHT. I have been a bank director here and I have never known them to charge more than six per cent. They may expect some balance to stay—

Mr. NILES. They sell exchange.

Mr. KNIGHT. The people of the west having these balances send them, as I say, where they can get the best rate of interest. Now the New York bankers and the New York saving funds can allow five per cent., because they can re-loan at seven. Philadelphia saving institutions can only allow four per cent., because

they can get but six. Therefore, we are discriminating against ourselves here to the extent of one per cent., which is the cause of so little floating capital being in this city.

Mr. J. N. PURVIANCE. I should like to hear the gentleman from Philadelphia further, and I move, with his consent, that the committee rise, report progress, and ask leave to sit again.

The motion was agreed to. The committee rose; and the President *pro tem.* having resumed the chair, the Chairman

(Mr. Cuyler) reported that the committee of the whole had had under consideration the article (No. 11) reported by the Committee on Agriculture, Mining, Manufactures and Commerce, 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. CORBETT. I move that we adjourn.

The motion was agreed to; and (at six o'clock and two minutes P. M.) the Convention adjourned.

## ONE HUNDRED AND FIRST DAY.

FRIDAY, May 16, 1873.

The Convention met at ten o'clock A.M.,  
Hon. John H. Walker, President *pro tem*, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday was read and approved.

## INVITATION TO ALLENTOWN.

The PRESIDENT *pro tem*. A letter addressed to the President of the Convention which has been received, will be read.

The CLERK read as follows:

"MAYOR'S OFFICE,  
CITY OF ALLENTOWN, PA.,  
May 14, 1873. }

Hon. Wm. M. Meredith, President of Constitutional Convention:

RESPECTED SIR:—I enclose preamble and resolution passed by the councils of this city, at their regular meeting last evening.

In pursuance of this I respectfully extend an invitation to your honorable body, when you do adjourn over the warm months, to re-convene at Allentown. We feel assured that we can fully furnish all accommodations. Please answer.

I am, very respectfully,

Your obedient servant,

T. C. YEAGER,

Mayor.

"WHEREAS, We have learned that the Constitutional Convention now sitting in Philadelphia propose adjourning during the summer months to some inland city, therefore

"Resolved, That the mayor be authorized and directed to extend an invitation to the President of the Convention, inviting them to adjourn to Allentown."

Mr. J. PRICE WETHERILL. I move that the thanks of this Convention be extended to the mayor and councils of Allentown and that the invitation be respectfully declined.

Mr. LILLY. I move to postpone the consideration of the motion for the present.

The motion to postpone was agreed to.

## PETITIONS AND MEMORIALS.

Mr. GUTHRIE presented two petitions of citizens of Allegheny county and one of

citizens of Butler and Allegheny counties, praying for the insertion of a clause in the Constitution recognizing Almighty God and the christian religion, which were laid on the table.

## DEBTORS' EXEMPTION.

Mr. PATTON submitted the following resolution, which was twice read and referred to the Committee on Legislation.

Resolved, That the Committee on Legislation be requested to report the following as supplementary to their report:

"All laws exempting property from levy and sale shall be inviolate, and any contract or agreement waiving the right of any debtor to such exemption shall be null and void. And the Legislature shall enact such laws as will effectually prevent debtors being deprived of the rights of such exemption."

## COMPENSATION OF MEMBERS.

Mr. CURRY. I offer the following resolution:

"WHEREAS, The Legislature has repealed that portion of the act providing for calling a Convention to amend the Constitution, which fixes the salary to be paid to its members, and has appropriated the sum of five hundred thousand dollars for salaries and other necessary expenses; therefore,

Resolved, That a committee of seven be appointed by the President to consider and report upon the amount of salary to be received by the members of the Convention.

The resolution was read twice and considered.

Mr. HARRY WHITE. I move that the resolution be postponed for the present.

Mr. C. A. BLACK. I second that motion.

Mr. NILES. I move to amend that motion by moving to postpone indefinitely.

Mr. NILES. Before that vote is taken, though I did not offer this resolution, I desire to say one word, without committing myself upon the question of salary at all. It seems to me eminently wise and proper at this time, after we have been in session nearly six months, that some ac-

tion should be taken in reference to this question. We must meet it either one way or the other. The Legislature in their wisdom have repealed the original act fixing the salary at \$1,000. The duty now devolves upon us either of fixing it or not. We cannot shirk the question; and it seems to me that the proper way to meet it, and meet it fairly and squarely like men, is to appoint a committee. Let them review the whole question and make their report to the Convention, and when the report is made we can adopt it or reject it as we see fit. At this late hour in the session, after our time here has exceeded the anticipation of everybody, it seems to me that we might as well meet it in this way, and meet it fairly and squarely, and refer it to a committee to be appointed by the President. I do not think we are to gain anything by shifting the responsibility or postponing the evil day.

Mr. CARTER. Mr. President: I am in favor of this postponement for the reason that neither a committee nor this body can act intelligently on this matter at present. The gentleman assumes that we are near the end of our labors. I hope so; but I know not whether it be so or not. It is very evident that no one knows or can tell or foresee the end; consequently we do not know what is a proper amount of salary, or to fix the pay of members of this body. Therefore, the measure is certainly premature. Let us work earnestly, and devote all our energies in every possible way to the work before us, and then in a month or so hence it will be time enough to consider this matter, for then we can act intelligently, and then we shall know what would be a proper compensation to fix for the services of members of this body.

Mr. HARRY WHITE. I have but one remark to make upon this subject. I made the motion to postpone for the present, which has been amended by the motion to postpone indefinitely; and I am content with the action of the Convention in the premises. I think it would be wise to postpone this question; I think it would be very unwise to take action upon it at this time.

I have no desire to attempt any demagoguism upon this or any other question. I presume no delegate to this body has such desire. I think it unwise to take action thus early in the session. I mean thus early after the Legislature have passed the modification of the organic

act upon this subject. I think it unwise because we cannot show to the people that we have taken final action upon any one article of the Constitution.

I was at my home the other day among my constituents, and the natural question arose: "What has been done? What are you doing? You are a long time in session." "Well, we have gone through the committee of the whole." They did not all understand that. I could not say that we had taken final action upon any one article. Not one delegate in this body can face his constituents and say that final action has been taken by this Convention upon any one article proposed for amendment. In view of this, in view of the fact that we do not know how long our labors will continue, I think we ought not to be unnecessarily anxious upon the subject of pay.

We know, Mr. President, how sensitive the public is upon this question, and we owe it to ourselves and the great reform with which we are connected, to act prudently in this matter. If the impression obtains and goes abroad that there is more selfishness, more regard for the individual interests of the delegates themselves than for the work they are performing, they who finally pass upon our work will be prejudiced against our entire labors. Hence I think it wise for us to wait until we have made further progress, until we have taken final action upon something, until we have made some progress and shall be able to see where we are.

For these reasons, and these alone, I made the motion to postpone the consideration of this question for the present.

Then again, Mr. President, it cannot be said that members are suffering for want of action in regard to their salary, for I understand, I know indeed, that some delegates have necessarily called upon the State Treasurer for advances upon their pay. He has responded, and I presume the majority of delegates have received some advances in that respect. I apprehend that no suffering exists in this regard. But, sir, prejudice may arise in the public mind against our action if we hasten to fix the salary before we can show them any of our work.

Mr. HUNSICKER. Will the gentleman allow me to make a suggestion to him?

Mr. HARRY WHITE. Certainly.

Mr. HUNSICKER. I understand this proposition to be simply to appoint a committee to consider this subject, not for us to take final action this morning.



Mr. HARRY WHITE. Well, Mr. President, it is unusual in that respect. We have a Committee on Expenditures and Accounts, and I think it unwise to appoint a special committee in addition. It looks as if there was some design to do things out of the usual course.

Mr. CURRY. Mr. President: I offered the resolution with pure motives and good intentions. Little did I think that the gentleman from Indiana (Mr. Harry White) would attempt to defeat it by his unwise counsel, as he has done. I think the wisest course for the gentleman from Indiana would have been to say nothing at all and simply permit this subject to go to the committee, as it will whether he is wise or unwise on the subject. That is all we ask. The idea is simply to put this question at rest for the time being; and when the proper time comes, I hope that the members of the Convention will meet the question squarely like men, not like political trimmers, not like political demagogues, not like men who are afraid to assume any responsibility, not like men who are so afraid of their constituents that they dare not do what they believe to be right. The truth will bear a man out wherever he goes. That which is right is what the people expect us to do in this and in every other case. The committee may report a great deal less than the Legislature indicated for ninety days; they may report a little more. We have no idea what they will report nor when they will report. Therefore I think it was exceedingly unwise for the gentleman from Indiana even to make the motion he did.

Mr. NILES. I withdraw my motion for indefinite postponement.

The PRESIDENT *pro tempore*. The motion to indefinitely postpone is withdrawn.

Mr. HARRY WHITE. I renew it.

Mr. AINEY. Mr. President: I earnestly hope that this question will not be forced upon the Convention at this time. We have already said in the article upon legislation that it is improper for a legislative body to fix its own compensation. I voted for that section believing it to be right in principle and wise in policy, and I believe so still. Viewing it in this light I shall oppose any proposition to entrap us here into the inconsistency of saying that it is proper for this body to fix its own compensation. I understand the State Treasurer will pay each of the members of this Convention to the extent of one thousand dollars—as salary.

Mr. NILES. There will not be another dollar paid.

Mr. AINEY. That is a mistake, I think. I am informed the State Treasurer will pay each the members of this Convention to the extent of one thousand dollars. I earnestly hope that it will be left there, and that we will leave the matter with the Legislature to fix, when they assemble next winter, a reasonable and fair compensation for the services rendered as members of this Convention. I hope, therefore, the motion to indefinitely postpone will prevail.

Mr. HAY. I hope the delegate from Lehigh does not suppose that it would be proper for the State Treasurer now to make such payment, even if he were disposed to do so.

Mr. BOWMAN. Mr. President: I am not very sensitive upon this point. The gentleman from Lehigh (Mr. Ainey) says that our better course will be to trust the Legislature to enact another law upon this subject. Why, sir, they have already passed two, one in 1872 and another in 1873, and by the act of 1873 the compensation fixed by the prior act was repealed. I would ask the gentleman by what authority the State Treasurer can pay out one single dollar as a compensation to the members of this Convention, under any existing law? I understand, sir, that the State Treasurer has already paid from seventy-five thousand dollars to eighty thousand dollars, for which he has no voucher more than the honor of the individuals to whom this money has been paid.

Now, one word, sir, in relation to the remarks made by the gentleman from Indiana (Mr. Harry White.) I am aware that many of the members of this Convention, perhaps a majority of them, occupy positions that are entirely unequal to that occupied by the gentleman from Indiana. I find myself surrounded here by one hundred gentlemen who cannot enter into this contest upon the same terms as the gentleman from Indiana can. As well might a gentleman turn around and say to me that he will flip cents, he using at the same time a double-header and I only a cent with one head upon one side and a tail on the other. He would be sure to win. It would be an unequal contest. No other gentleman holds that position on this floor. It is well enough for him as a double-header to come in and say that gentlemen from the remote parts of this Commonwealth can sacrifice their business and close their office doors, can leave

the grass to grow green upon the footsteps of their doors and come down here and spend their time and their own money and all they can borrow from their friends to defray their legitimate expenses in this Convention, and say, "put this thing off; do not take this responsibility; I will be in the Senate next winter, and notwithstanding I aided to pass the first law and also repealed that law, I will see next winter that this thing is all made lovely and beautiful!" If this is the way the gentlemen of this Convention propose to meet this question, say so. I have a resolution here, not referring to this, but referring to another subject which I propose to present to this Convention and have the members answer upon the yeas and nays, which I will call when the proper time comes.

Mr. President, we may as well meet this thing now as at any future time. We are here, and every dollar of expense we are incurring in the prosecution of this work we are doing at our own risk and at the risk of the Treasurer, who is paying out money without warrant of law.

What is this proposition? Simply to appoint a committee to fix the amount, and then of course that report will be made to this Convention and the Convention will decide the question for itself. If it is \$1,000 say that; if it is \$1,200 say that. The Convention will fix it, but let us fix some sum, some amount, that we may know where we stand and what we are doing.

MR. DUNNING. Mr. President: I do not desire to make any extended remarks on this question; but I believe that it is one in which every member of this body has a common interest; and our constituents, equally interested in it, understand it thoroughly. I do not understand nor do I believe that a majority of this Convention are in any manner sensitive or tender-footed on this question. Neither do I believe that our constituents are anxious in regard to it.

This is a question which is forced upon our consideration whether we will or not. It is one that we must determine. We are now acting as delegates to this Convention without any shadow of law by which any compensation can be anticipated. It was well understood in the early days of the session of the last Legislature that the compensation named for the members of the body in the law calling it into existence was not commensurate, but was entirely too small to meet

the case. It was generally understood at Harrisburg that our compensation was to be fixed at a higher figure. Unfortunately for that state of affairs some gentlemen of this Convention thought proper to criticise the action, not of the Legislature then in session, but the acts of previous Legislatures, by which iniquitous laws had been passed, and by which legislation had been enacted which had operated badly for the interests of the Commonwealth. The gentlemen of the Legislature seemed to think that every single argument that had been here advanced against any legislation that had occurred during the last quarter of a century, must apply directly to them, and they became indignant. They refused to provide any fixed amount of compensation for the members of this Convention, and it was publicly understood that they thus refused to fix a reasonable compensation for the members of this body in retaliation for our discussion on the subject of improper legislation. The Legislature carried into effect an act which threw the responsibility of determining our compensation upon ourselves, and that is the situation now.

Gentlemen may talk about trusting this matter to a future Legislature. I do not believe in that doctrine. What will be the natural argument of the next Legislature if we present ourselves as petitioners before them for compensation for our services here? They will justly say that as we refused to take the responsibility when it was made obligatory upon us to do so, and as the last Legislature had refused to settle our compensation, they would have nothing to with it. If we do not have the moral courage to stand up like men and fix this compensation, this will be, and justly, the inevitable answer of the next Legislature. Some gentlemen say that the present condition of this question was purposely designed as a trap set by the last Legislature to catch this Convention. For this, I care nothing. I know well that the people of this Commonwealth are not niggardly in reference to the payment of their public servants when it is believed that those servants are honestly performing their duties. That is the history of the people of Pennsylvania and they are not so ignorant as not to understand the position in which the members of this Convention are placed. I take it upon myself to say that my constituents are aware of the progress made by this Convention, and the large amount

of work that has been accomplished by us, even though thus far our action has only been confined to the committee of the whole and even although we have not taken final action on any subject in Convention. My constituents well understand the labor that has been done here and that it has been herculean.

Now, sir, as an individual I am not afraid to stand up here and vote for myself, if the question was fairly proposed to the Convention, instead of going to a committee, what I believe to be a reasonable compensation; and why should we not do it at the earliest stage? I do not want to do it when the Convention is near its close, so that it may be said, as it has been said of certain Congressmen, that we are voting ourselves back pay, and that we have continued in session for the purpose of voting ourselves a larger salary, intending to double it. I would be willing to vote to-day for what I believe to be a just and fair compensation; and if this Convention shall adjourn on the first of July, as I think we can, I do not believe that any committee could be appointed by the President of this Convention that would fully come up to the figure of what would be a commensurate compensation or one that would compare favorably with the compensation of members of the Legislature. The Legislature, I believe, generally meets on Tuesday and adjourns on Thursday. They spend about three days a week in session, and then they go to their homes. This Convention sits many more hours than has the Legislature for any number of years past.

But that has nothing to do with the question. The point is, inasmuch as the Legislature has made it obligatory upon us to fix our compensation in some manner, and a resolution has been submitted to refer it to the committee, and perhaps it is the better plan, I hope the time is fast coming when we will meet the question and not put it off until we are charged with voting ourselves back pay. I am told the State Treasurer says he will not pay a dollar until the demand comes by proper authority of law; the Legislature has provided how it may go properly to the State Treasurer; the duty of fixing our compensation has been imposed on us, and let us meet it like men.

I can very well conceive that there are many gentlemen in this Convention, perhaps, that do not feel upon this subject as others do; gentlemen who have very

long purses, or a very lucrative legal practice, or who are engaged in other business that is paying them largely and who spend but little of their time here, but are attending to their business at home, and receiving large pay and large fees—perhaps they can talk very coolly and very calmly upon this subject; but gentlemen who have made it their business to stay in this Convention for the purpose of doing the duties devolved upon them, ought not to be afraid to meet this question, and I trust they will meet it, and meet it like men.

Mr. HARRY WHITE. Mr. President—

The PRESIDENT *pro tem*. Does the delegate from Indiana withdraw his motion to postpone for the present?

Mr. HARRY WHITE. I withdraw the motion to postpone for the present and renew the motion to postpone indefinitely.

Mr. President, I am not going to discuss this matter further. I have no desire to discuss the question of salaries, nor the question of time. The delegate from Erie (Mr. Bowman) saw fit to make what he might regard as a personal attack upon myself, as representing the side of those who were against the increase of salaries. Now, I desire now and here to raise no question of that kind. The delegate from Erie says that he and other delegates meet me at a disadvantage on this question of salary. It is due to myself to state, inasmuch as many observations have been made about double pay, that I had the honor to be nominated as a delegate to this Convention while I was at the same time representing my district in the Senate, and I was nominated without my request. And it seems to me quite proper at this time, indeed I feel it a duty to myself, to say I do not design to take for my personal use any salary which is my due while performing my duty here as a member of this Convention. I have not received a dollar of salary as a delegate to this Convention; I reiterate, I have no desire to demagogue on this matter, nor to make any boast about it. I merely make the observation in the connection I have, in answer to such delegates as may talk of meeting some delegates at a disadvantage—to answer the indecorous fling about double-headers. Let them understand that I do not take anybody at a disadvantage upon this question. I have now, sir, but a single desire, which is to pause before hastening to fix the salaries of members. I would postpone action in this

regard, because I think it unwise for us to hurriedly proceed upon the heels of the adjournment of the Legislature, which has clothed this Convention with power to fix the salaries of its members, to fix our salaries before we have done any substantial work. This, sir, is my position. The good will with which our work is received will be seriously affected by imprudent action on this matter.

On the motion to postpone indefinitely, the yeas and nays were required by Mr. Harry White and Mr. J. Price Wetherill, and were as follow, viz :

## Y E A S .

Messrs. Ainey, Alricks, Bailly, (Perry,) Bardsley, Black, Charles A., Boyd, Carter, Ewing, Gilpin, Lilly, Littleton, M'Culloch, Newlin, Purviance, Samuel A., Smith, H. G., Smith, Henry W., Walker, Wetherill, Jno. Price and White, Harry—19.

## N A Y S .

Messrs. Achenbach, Addicks, Baer, Bailey, (Huntingdon,) Baker, Beebe, Bowman, Broomall, Brown, Clark, Collins, Corbett, Craig, Curry, Davis, De France, Dunning, Edwards, Elliott, Ellis, Gibson, Guthrie, Hanna, Harvey, Hay, Hazzard, Heverin, Horton, Hunsicker, Lamberton, Landis, Lawrence, Lear, Long, MacConnell, M'Clean, M'Murray, Mann, Mantor, Minor, Mitchell, Mott, Niles, Palmer, G. W., Patten, Pughe, Purviance, John N., Reed, Andrew, Ross, Russell, Stewart, Struthers, Turrell, Van Reed, Wherry, White, David N., White, J. W. F. and Wright—58.

So the motion to postpone indefinitely was not agreed to.

ABSENT.—Messrs. Andrews, Armstrong, Bannan, Barclay, Bartholomew, Biddle, Bigler, Black, J. S., Brodhead, Buckalew, Campbell, Carey, Cassidy, Church, Cochran, Corson, Cronmiller, Curtin, Cuyler, Dallas, Darlington, Dodd, Fell, Finney, Fulton, Funck, Gowen, Green, Hall, Hemphill, Howard, Kaine, Knight, MacVeagh, M'Camant, Metzger, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Read, John R., Reynolds, Rooke, Runk, Sharpe, Simpson, Smith, Wm. H., Stanton, Temple, etherill, J. M., Woodward, Worrell and Meredith, President—55.

The PRESIDENT *pro tempore*. The question is on the resolution.

The resolution was adopted.

The PRESIDENT *pro tempore*. The names of the committee will appear on the Journal.

## ADJOURNMENT SINE DIE.

Mr. BOYD. I move that this Convention adjourn *sine die* on the third day of July at twelve o'clock M., and I call for the yeas and nays.

Mr. SIMPSON. I second the motion.

The PRESIDENT *pro tempore*. The motion is before the Convention.

Mr. ALRICK. I move to amend, by striking out "third day of July," and inserting "third day of June."

The amendment was rejected.

The PRESIDENT *pro tempore*. The question recurs on the original motion.

Mr. BOWMAN. I offer the following as an amendment :

*Resolved*, That when this Convention adjourns on Friday, the twenty-third instant, it will be to meet in the Hall of the House of Representatives, at Harrisburg, on Tuesday, the twenty-seventh of the present month, at ten o'clock A. M. of that day ; and that on and after the twenty-seventh instant the permanent sessions of this Convention will be held in the House of Representatives at Harrisburg.

Mr. BAER. I move to amend the amendment—

The PRESIDENT *pro tempore*. The Chair is compelled to rule the amendment offered by the delegate from Erie (Mr. Bowman) as out of place. It is not germane to the question before the Convention. The motion is to adjourn *sine die* on the third of July. The amendment is to change the place of meeting from Philadelphia to Harrisburg.

Mr. BOWMAN. Under the ruling of the Chair then, I will withdraw my amendment for the present.

Mr. AINEY. I move to postpone the pending subject for the present.

Mr. BOYD. I call for the yeas and nays on that motion.

Mr. ADDICKS. I second the call.

The PRESIDENT *pro tempore*. The Clerk will call the roll.

Mr. LAWRENCE. I understand the gentleman to withdraw the call for the yeas and nays.

Mr. BOYD. No, I do not ; I insist upon it.

Mr. AINEY. With a view to avoid two calls of the yeas and nays, I withdraw the motion.

Mr. BOYD. Let us have a direct vote on the third of July, and I call for the yeas and nays on that motion.

Mr. MANN and Mr. MACCONNELL. I second the call.

The PRESIDENT *pro tempore*. The question is on the resolution as offered by the delegate from Montgomery (Mr. Boyd.)

The yeas and nays were required by Mr. Boyd and Mr. Mann, and were as follows, viz:

YEAS.

Messrs. Achenbach, Boyd, Craig, De France, Dunning, Ellis, Hanna, Hay, Heverin, Landis, Lawrence, Lear, Long, MacConnell, M'Clellan, M'Culloch, Mann, Mitchell, Ross, Russell, Simpson, Smith, Henry W., Stewart, Turrell, Van Reed and Wright—26.

NAYS.

Messrs. Addicks, Ainey, Alricks, Baer, Bailly, (Perry,) Baker, Bardsley, Beebe, Black, Charles A., Bowman, Broomall, Brown, Carey, Carter, Clark, Corbett, Curry, Cuyler, Dallas, Davis, Edwards, Ewing, Fell, Gibson, Gilpin, Guthrie, Harvey, Hazzard, Horton, Hunsicker, Knight, Lamberton, Lilly, M'Murray, Mantor, Minor, Mott, Newlin, Niles, Palmer, G. W., Patton, Pughe, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Smith, H. G., Struthers, Temple, Walker, Wetherill, John Price, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—56.

So the resolution was rejected.

ABSENT. — Messrs. Andrews, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Biddle, Bigler, Black, J. S., Brodhead, Buckalew, Campbell, Cassidy, Church, Cochran, Collins, Corson, Cronmiller, Curtin, Darlington, Dodd, Elliott, Finney, Fulton, Funck, Gowen, Green, Hall, Hemphill, Howard, Kaine, Littleton, MacVeagh, M'Camant, Metzger, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Reynolds, Rooke, Runk, Sharpe, Smith, Wm. H., Stanton, Wetherill, J. M., Woodward and Meredith, President—50.

COMMERCE, AGRICULTURE, &c.

Mr. ANDREW REED. I move that the Convention go into committee of the whole on the article reported from the Committee on Agriculture, Mining, Manufacture and Commerce.

The motion was agreed to, and the Convention accordingly resolved itself into

committee of the whole, Mr. Cuyler in the chair.

The CHAIRMAN. The committee of the whole have before them article No. 11, reported by the Committee on Agriculture, Mining, Manufacture and Commerce. The first section is under consideration, and the pending question is on the amendment of the gentleman from Mifflin (Mr. Andrew Reed) to strike out all after the word "lawful" in the third line. The words proposed to be stricken out are:

"All national and other banks of issue shall be restricted to the rate of seven per centum per annum."

Mr. KNIGHT. I yesterday omitted to mention two institutions which had been referred to by my distinguished colleague (Mr. Carey) as Shylock institutions. One was the Iron bank incorporated by the act of nineteenth of May, 1871, (pamphlet laws of 1871, page 955.) The other was the West End bank, incorporated by the act of November twentieth, 1871, (pamphlet laws of 1872, page 1383.)

It may be argued that the change in the rate of interest will materially affect existing mortgages. That, I think, will not be found to occur to any great extent. Mortgages are being taken on well secured property as low as five per cent., and many parties could no doubt obtain money by increasing the rate of legal interest to seven per cent., which would be much better for them than to pay the discount they have now to pay in borrowing money to get it at six per cent.

My distinguished colleague also alluded to the course which capital had taken in consequence of the chartering of these and similar institutions, and said that they had very materially interfered with the growth of the city and the increase of permanent buildings. I differ with him in that respect, because the statistics of this city show that for several years past the increase of new buildings has averaged from five thousand to six thousand annually.

I contend that the rate of interest at six per cent. as at present existing has operated greatly against the community for several reasons, and for one in particular. I have shown by reference to various first class mortgage bonds, those of the Lehigh Valley railroad, the North Pennsylvania railroad, the New York and Pennsylvania canal company, and other similar corporations, that such bonds at seven per cent. can be placed in this market at or above

par. I have also shown that six per cent. mortgage on property can be bought at about ninety, or under, on good, sound, valid security with policies of insurance accompanying the mortgages.

I have now before me an illustration of that fact. I have here a part of a mortgage on property situated in the District of Columbia, amounting to \$10,000, bearing ten per cent. interest and having three years to run. This is only one-tenth of a mortgage well secured, the entire amount being \$100,000. The party wishing to borrow this money came to Philadelphia and I think in one day disposed of \$50,000 of this mortgage at par. That was \$50,000 of the capital of this State taken out of the State that otherwise might have remained here. It may be looked upon by many that this is a very exorbitant rate of interest; but if these gentlemen had made a mortgage in this city for three years at six per cent. and offered it at ninety, that would have been the best price that they could have obtained for it. Let us contrast these rates of interest under that condition. A mortgage bearing ten per cent. for three years being sold at par and a mortgage bearing six per cent. for three years disposed of at ninety would be practically equal. In the first place there is a margin of \$10,000 on the \$100,000 lost in the sale of the mortgage at six per cent. In the next place there is the compound interest on the \$1,800 which would accrue as interest on this margin at six per cent in three years. The margin of \$10,000 and the interest on it of \$1,800 would make \$11,800, and the compound interest on that sum would bring it much over \$12,000. Now, the extra interest on the mortgage for \$100,000 for three years at ten per cent. over that taken at six per cent. is exactly \$12,000; and therefore you see that the two mortgages are equal. While it may look very much cheaper to get money at six per cent. at a discount of ten per cent., it is absolutely, in a three years mortgage, paying ten per cent for money.

Railroad companies understand this and give it practical application in the negotiation of their mortgage bonds. Take a railroad company seeking to borrow ten millions of dollars. If they make their mortgage under a special law enabling them to borrow money at seven per cent. interest, they can get their bonds taken at par; but if they make the rate of interest six per cent. they will have to sell their bonds probably at ninety. If they do they

will be paying six and six-tenths per cent. for the use of the money borrowed and at the same time sacrificing the capital of the State and of the stockholders to the amount of one million dollars in order to obtain their loan. If they are obliged to sell at eighty-three and one-third, they will then pay seven per cent. for their money and sacrifice the interests of the community and of the stockholders interested in the company to the extent of \$1,666,667; and when the mortgage falls due that amount must be paid in addition to the full net amount originally received. The community is the loser of just exactly that amount, which is sixteen and two-thirds per cent. of the face value of the mortgage.

Now, I contend that we cannot afford to go on at this rate of borrowing money, if we want to prosper. I do not think borrowers of money have given this important question proper consideration. If they had done so and the question of borrowing money was correctly understood, men would not go on borrowing at these immense discounts when they could get money at par by paying a little higher rate of interest. With New Jersey on the east allowing seven per cent. as the legal rate, with New York on the north fixing the legal rate of interest at seven per cent., and with Ohio on the west where the legal rate is eight per cent., taking away our capital into all of these States. Were it not for the energy, perseverance and economy of our people, and for the great inherent wealth of our State, we should be bankrupt to-day. And bankrupt we shall be, with all these advantages, if we go on at our present rate of interest. Nothing will save us but the real solid wealth of the Commonwealth, the vast natural wealth of our State, which is all that is upholding us to-day, and we shall strain even that too far.

You may say that this is a subject for legislation. Perhaps it is. I am well aware that the Board of Trade and the people of Philadelphia, and perhaps of other sections of the State, have been knocking at the door of the Legislature for the last thirty years to obtain redress in this particular, and have experienced only repeated failures. Some have been uncharitable enough to say that they can account for the persistent refusals of the Legislature to interfere in this regard by the fact that the members of that body are generally borrowers, and not lenders, of money. This may be so; but I do not

know its truth; but I do say that if they properly understood the correct principle involved in this question, they would have applied it and increased the legal rate of interest to seven per cent. If that had been done, they could have borrowed money cheaper than by paying six per cent. and submitting to the sacrifice required where loans are made below par.

As to the usury laws, I stated yesterday that they were not enforced. That must be and is an admitted fact. Every gentleman doing business in the State of Pennsylvania knows that there is no enforcement of the laws against usury. It is very rarely indeed that a case comes before a court where the usury laws are pleaded in mitigation of a claim for money loaned. A case came under my personal notice where a gentleman who needed money agreed to pay twenty-five dollars per month for a five hundred dollar note, and then sold it for one or two per cent. a month. Like most men who are compelled to place themselves in that situation, he was unable to meet his obligations, and his creditors foreclosed and sold him out. Some of his creditors said to him, "Why do you not appeal and plead usury?" Said he, "I am an honorable man; I knew what I was about when I borrowed the money; I could not have procured it under other conditions, and I must accept the responsibility I incurred." Had that man gone into court and plead the benefit of the usury law, his character would have been stamped with dishonor; the whole community would have regarded him as one who had not lived up to a contract; and he would have irretrievably ruined his business standing. As it was, he preserved it, and to-day he is worth half a million of dollars, and in this community stands high in the estimation of all who know him.

So far as instances of the usury laws having been pleaded in court are concerned, I stated yesterday that I would like to hear from some of the legal gentlemen of the Convention who are familiar with the proceedings of our courts, upon that point. I now take occasion to ask my distinguished colleague who is now presiding over the committee of the whole, how many instances of this nature have come under his observation in his long and extensive practice at the bar.

The CHAIRMAN. Not more than three have come to my personal knowledge as a professional man.

Mr. KNIGHT. The experience of the gentleman bears out my position.

Mr. CAREY. May I interrupt the gentleman for a moment?

Mr. KNIGHT. Certainly.

Mr. CAREY. I desire to ask my friend if he does not know that Connecticut one year ago repealed the usury laws and that the effect has been such that she is about to re-enact them. In that State the repeal was an act of legislation and therefore susceptible of change. I should like my friend to explain how we are to change our system, if at the end of one year we find our experience to be in accordance with the experience of Connecticut for the last twelve months. Connecticut has found the repeal of her usury laws to work so badly that the people demand their re-establishment, and the Governor—a Democratic Governor—recommends in his message to the Legislature of that State that they be re-enacted. He points out the enormous injuries that have resulted from the act passed at the last session of their Legislature, and I speak advisedly when I say that the injuries were enormous. I want my friend to explain how, if at the end of a year we find that the result here is exactly that which has been realized in Connecticut, we are to bring about a remedy and change a system which because Constitutional would be practically irrevocable.

Mr. KNIGHT. In the first place let me tell my colleague that I do not think we shall want any change in our system if we abolish the usury laws. In the next place, I would remind him that he has already answered himself. According to his own showing, from 1866 down to the present time, twenty-one States have done away with the usury laws to a very great extent—perhaps the gentleman included Connecticut in that statement, I do not know how that is—and yet only one of the entire twenty-one is mentioned as desiring a change, and in that State no official form has been given to what may not be even a general desire of the people. The gentleman from Susquehanna (Mr. Turrell) has handed me a newspaper extract which bears upon this point, and I will read it as an additional reply to my distinguished friend's inquiry. The extract says:

"The repeal of the usury laws is not a new experiment. In England the rate of interest is left to be settled between the borrower and the lender, and it works no injustice to either party. In this country, in Connecticut, Ohio, Georgia, and in Massachusetts, the restrictions on loans have been removed, and a distinguished jurist in the latter State, who is perfectly familiar with the whole subject, says in a private letter:

"I never knew an act of legislation which has so completely justified the predictions of its friends and refuted those of its opponents as the repeal of the usury laws. It would seem that we had had the ordering of events ever since, to vindicate our arguments. Not only has the monetary effect been all we expected, but the moral effect on money transactions has been excellent. The secret, falsified transactions and the large fees of the nominal parties and go-betweens have disappeared, and the strain taken off the consciences of jurors, parties and witnesses, and bank officers, and the borrowers and lenders meet face to face, and the market rates are steady and govern all transactions, and money brings its natural rates."

"This is the condition of things we need in this State; and for that reason thousands of merchants of this city, of the borrowing class, have asked for a revision of the law."

I do not know any better answer than I can give the gentleman than to thus refer him to the States in which this experiment has been tried, and where such success has attended the trial as to make it no longer an experiment but an actual experience.

Massachusetts, one of the States referred to by the distinguished jurist quoted above, has six per cent. as the legal rate of interest when there is no agreement for a different rate; but any rate of interest may be received or contracted for between the parties. I dwell on this very important fact that in seven years there have been twenty-one States of the Union, in addition to the ten which had already done so, that have done away almost entirely with the usury laws or have so modified them that the public are at liberty to make negotiations face to face without being trammelled by third parties, which interposition is a great drawback to business transactions and must be so admitted by every business

man in the community. The section before us reads:

"In the absence of special contracts, the legal rate of interest and discount shall be seven per centum per annum, but special contracts for higher or lower rates shall be lawful."

Under this section any party can make a contract with another party for the borrowing or loaning of money, and as long as the special contract lasts the rate of interest is the rate agreed upon, but the very instant it expires then the legal rate becomes seven per cent; and if there is no special contract then the legal rate of interest is seven per cent. Although this is somewhat new and rather different from anything in the Constitutions or legislative acts of the other States, I think it is very fair.

Again: "All national and other banks of issue shall be restricted to the rate of seven per centum per annum."

That is just the law of the government to-day. The national bank law says the rate of interest to be charged by a bank is to be fixed by the legal rate of interest in the State where the bank is located. I will esteem it a great favor if the gentlemen of this committee will allow this section to pass as reported, and let it go before the public, that they may discuss it and analyze it, and look into it, and condemn it, if they will, in every part, until we come to pass upon it again on second reading; then if alteration is thought to be necessary, we can alter it. But this subject was up before the committee of nine, appointed by the President of this Convention, who gave it a great deal of consideration and had from seven to ten meetings on the subject, and they reported it unanimously with the exception of the gentleman from Allegheny (Mr. Ewing) who was absent. So far as this has been shown to persons versed in banking, and who have a large interest in the welfare of this Commonwealth, I have not as yet found one to say anything against the provision here reported.

My friend alluded to the action of the Board of Trade. We have in this Convention a distinguished member of the Board of Trade, who I think much better capable of answering the inquiry than I am. Therefore, I will ask my colleague, Mr. Wetherill, to say what he deems the views of the mercantile and business community are on the subject of the proposed change in the rate of interest.



Mr. J. PRICE WETHERILL. Mr. Chairman: It seems to me hardly worth while to add a word to what has been so exhaustively said by my colleague from Philadelphia, (Mr. Knight,) and yet at the same time I feel that after the elaborate essay presented by my other colleague (Mr. Carey) yesterday, prepared with so much care, and presenting in such a clear and forcible manner one view of the case, at least the other view of the case should be presented by some one; and I only regret that I shall be compelled in my own plain and homely way, inasmuch as the gentleman from Philadelphia who has last spoken did not allude to it, to give what I conceive to be the mercantile view of the other side of the case.

In the first place my distinguished colleague from Philadelphia (Mr. Carey) has shown, to himself at least, so conclusively that the manufacturers of Philadelphia, the merchants of Philadelphia, the borrowers of money in Philadelphia have united. Strange bed-fellows truly, he must think they are. Yet he says they have united with the Shylocks, the money-lenders and the men who crush the poor and the men who grind the needy, to secure what they conceive to be an object alike beneficial to both! Was there ever anything more strange than that? Who are the men that come to this Convention to ask that this section should be passed? Are they the money-lenders? No. Are they the Shylocks who want the pound of flesh? No. Who then are they? They are the merchants and manufacturers of the city of Philadelphia, as represented by their trade associations. The Philadelphia Board of Trade has memorialized this body for the passage of this section, and they comprise about twelve hundred of the merchants and manufacturers of this city.

We pride ourselves on the commercial condition of the city of Philadelphia. In her industrial interests we know that she shows a product in manufactures of \$365,000,000. We know that she keeps in active motion eight thousand five hundred busy factories, and who furnishes the money for the support of these factories; who employs the hands; who gives this success to enterprise; who places the city of Philadelphia in this proud position? The men who come here to-day and ask us to pass this section. The Philadelphia Board of Trade are not Shylocks as hunted at by the delegate from Philadelphia.

The president of the Philadelphia Board of Trade, who asks us that we shall pass this section, is not a Shylock. Any man who knows Mr. John Welsh knows very well that he keeps no such company. The Shylocks move in a different direction from the one indicated. Why, sir, the many acres that he has given to the park of the city of Philadelphia is not certainly an act in that direction. The efforts he has made to increase and extend the commerce and the manufactures of the city of Philadelphia do not look in that direction. But he knows, and the Board of Trade know, and the merchants and manufactures of the city of Philadelphia know, being seventy-five per cent. of them borrowers of money, needy borrowers oftentimes, that if we fix the rate of interest at seven per cent., equal to New Jersey, equal to Ohio, equal to New York, we shall have money just as cheap in Philadelphia as they have it in any city or in any State of the Union.

I beg leave, sir, in the further consideration of this question to allude to what was said by my distinguished colleague (Mr. Carey) in reference to the condition of England, and the abolishment of the usury laws there. He said:

"Forty years since English money-lenders were busily engaged in singing the same siren song that is now being here repeated. Journalists in their pay assured manufacturers and traders that the road toward the cheapening of money lay in the direction of abolishing all restrictions upon the contracts of those who alone could furnish it; and that the more completely the hands of the rich were freed the lighter would be the blows that would be dealt among the poor and the weak, by whom they were everywhere surrounded." And he adds:

"What was the consequence? Public confidence", he says, "was destroyed; pauperism and usury traveled hand in hand, the rich growing richer and the poor poorer." Now, sir, I hold in my hand a report of a committee of merchants and manufacturers of England, called together by a resolution of the House of Lords in 1842, upon this very subject, and although some of them, among others the distinguished banker, Mr. Gurney, in 1818 doubted the wisdom of the repeal of the usury laws, he on this occasion made a complete and voluntary recantation of his former opinion and declared that the change had been beneficial. He thought in 1818 that the repeal of the usury laws

would bring pauperism hand in hand with usury; but in 1842 he admitted that experience had proved his error; and some of the very men, perhaps, alluded to by my distinguished colleague came forward, and with the evidence before them of the growing prosperity of England, humbly said to that committee of the House of Lords, "We recant, gentlemen; we were wrong in our opinion."

Now, listen, if you please, to the testimony as taken by that committee in regard to the benefit of the abolition of the usury laws of England. First, they report, "that the bank of England was enabled to discount all good paper offered in times of difficulty." Does that show that pauperism and usury went hand in hand together? I think not. The bank of England was enabled to discount all good paper offered in times of difficulty.

Mr. CAREY. On what authority is the gentleman relying? How was it in 1856?

Mr. J. PRICE WETHERILL. I am reading from the report of 1842. I will get to the year 1856 after a while. I have stated the first effect.

*Second.* "That in times of great pressure fewer failures occurred than had happened in similar emergencies before the change, inasmuch as capital was now permitted to flow freely to the points of the most intense pressure." Money seeks its level. If it is easy here and tight elsewhere it goes elsewhere and the equilibrium is restored. And this was found as the second result, that in times of greatest pressure, by reason of the abolition of the usury laws, fewer failures occurred. Does that show that pauperism and usury go hand in hand? I think not, sir.

What next?

*Third.* "That advantage secured, the change had augmented the amount of money employed in the commercial market at the periods when it was most wanted." See how fully this result is secured. Here with our irredeemable currency, here with our houseless, homeless currency, without any possibility of redemption, and without elasticity, all our money panics come upon us? When there is a want of money in the west to move grain, when there is a want of money in the south to move cotton, we have these periodical visitations of trouble in our money matters. Here it is clearly shown that by the change in England, all this trouble was obviated.

*Fourth.* "That the higher rates of interest paid by some parties after the repeal were yet lower than the same parties had paid by indirect methods before the repeal"—showing conclusively also there that not the Shylocks, not the money-lender, not the men who oppressed the poor are only those benefited, but just the reverse. The poor man is a borrower, the needy manufacturer is a borrower, and they are enabled to borrow with greater facility than before the change.

The fifth point is a little curious in view of the very alarming picture presented to us yesterday by my distinguished colleague from Philadelphia. He stated that we had investments in mortgages on real estate to the amount of \$500,000,000 in this State; and I saw the feeling of alarm that spread over the Convention at the idea of changing the rate of interest from six to seven per cent., and uprooting the freedom of all these securities, and I felt that perhaps there might be some force in the remark until it was looked into very carefully; and what does the committee in England report just after this change alluded to there.

*Fifth.* That the rate of interest paid upon mortgages remained as before, unaffected by the transient changes of the money market; although six per cent. or more had been paid upon commercial paper, the interest on mortgages remained at three and one-half to four per cent." Evidence such as this cannot be overlooked, Mr. Chairman.

It is said that during the war the money market was in such a condition as to bring blessings upon the trade and commerce, and on that point my distinguished colleague from Philadelphia, (Mr. Carey,) on page seven of his speech, states that during the war, for the first time, commerce ceased to be clogged and healthful rapidity of circulation and industrial independence were the consequence; that during the war the nation was compelled to issue \$400,000,000 of legal tenders, and the consequence was that we all paid cash for our products, and the farmer could sell his crops at a good price and for ready money.

Mr. Chairman, I well recollect the condition of the commercial and manufacturing interests of our country during the period from 1861 to 1865, when, to save the honor and the credit of this country, the government was forced to purchase \$1,000,000 worth of war material per day to be destroyed by war. Although that

did for a while stimulate trade, and for a while we did receive some little apparent benefit from it, yet when I consider the condition of things in which it placed the commercial interests of this country, I am sure I can never agree to the language of my distinguished colleague. Who does not recollect the condition of things in which we were then placed. Go with me in imagination for a moment, Mr. Chairman, to the counting-room of a manufacturer or of a merchant during that period. You see upon his desk, his books and his journals; but what else? You see upon his desk the indicator of the gold telegraph, and he watches that indicator with infinitely more care than he does his ledger or his journal. As that indicator points to high gold, it puts money in his pocket; as it points to low gold it takes money out of his pocket. If he imports goods with gold at 130 and gold runs up to 185, you can see that his mind is occupied in matters which are purely speculative; and hence that feeling of avarice, that desire to make money, ran through this land like wild-fire. The merchant left his regular business because he could make quite as much money in handling gold as merchandize.

What was the result? Need I for a moment remind gentlemen of the condition of things during the war? Let the gentlemen from Venango and Crawford counties speak of it. Let the speculation which ran like wild-fire through this State in regard to oil and oil property be my answer. Then this country, instead of its honest merchants and its sober commercial men, was filled with Coal Oil Johnnies, running riot in wild speculations of all sorts and kinds; the whole commercial interests of the country were shaken to their very centre. Was there any benefit derived from such a currency inducing such a condition of things as this?

My distinguished colleague tells us that the only way to make money easy is to issue more greenbacks, or by the printing press; that all we have to do if we want money is to get the government to start its printing press and issue legal tenders; we want \$42,000,000, and we must have it. What would be the consequence? When the \$42,000,000 is exhausted, we will want more, and the printing press will have to be set at work again. My word for it, if that system had not been checked, we would have seen the same condition of things here during the war which

existed in the South. I heard a gentleman say that in Richmond he bought with the same currency a barrel of flour for \$5 and a few years afterwards a barrel of flour for \$1,500. We would have brought about that condition of things which existed in the South then, when a man was compelled to take a wagon load of money to market to bring back a basket-full of marketing.

Now, sir, we come back to the condition of things after the war and as at present existing. We are told by my distinguished colleague from Philadelphia, on page twelve of his speech, comparing the rate of interest and condition of things in New York with that of Pennsylvania, that in New York, on account of the great taxation and other causes, borrowers on mortgage are compelled to go abroad to borrow money. I do not know that we have borrowed on property in the State of Pennsylvania so large an amount as \$500,000,000. The tax on our personal property yields, I believe, but \$500,000, and at \$3 on the thousand, I am sure it will fall very much below the calculation made by my distinguished colleague. If I am correct in the figures, that would make the tax \$1,500,000 to be paid into the State Treasury, whereas only \$500,000 is paid from all personal property into the Treasury of the State. But we look at results, and if we want to know the real prosperity of a State, we look at its value in manufactures, its value in real and personal property.

It is a little remarkable if money is so hard to borrow in New York on mortgage that her condition in regard to real and personal property compares very favorably with the condition of Pennsylvania in that regard. The real and personal property in New York in 1850 was \$1,800,000,000; the real and personal property in the State of New York in 1870 was \$6,500,000,000. Now compare that with the condition of Pennsylvania. The real and personal property of Pennsylvania in 1850 was valued at \$1,400,000,000, and in 1870 at \$3,800,000,000. I always stand up for my own State, and I heartily endorse every word that has been so eloquently and so beautifully said by my distinguished colleague in that regard. We are head and front, and I hope shall ever continue to be, of the great commercial and industrial interests of the country; but it will not do for us to say that the personal property in the State of New York is in such a condition on account of the inability to borrow

money on mortgage there in the face of the figures which I have presented.

Now, sir, we come to Ohio. My colleague has also alluded in his speech to that State. He says that, although the rate of interest is very high in Ohio, although they have the right to borrow money at any rate up to a certain amount, eight or ten per cent., yet that State has not increased in wealth, prosperity and population in anything like the same proportion as Pennsylvania. I will admit in regard to Ohio that we have advantages superior to hers. We lie upon the seaboard, she does not. But with all the disadvantages which a young State, comparatively speaking, must have as compared with an older and more settled one, let us look at the condition of Ohio, even in that regard. The product of manufacturing in the State of Ohio in 1850 was \$62,000,000; in 1870, \$280,000,000, an increase of about 450 per cent. For a young State, I think that is doing pretty well. In my opinion, a great deal of money was drawn from the western counties of Pennsylvania to make up that aggregate. I do not know that any State in the Union can show a handsomer ratio of increase in the last decade than Ohio.

How does Pennsylvania compare in that regard? The manufacturing product of Pennsylvania in 1850 was \$155,000,000, and in 1870, not \$790,000,000, as I gather from the statistics which I have from Washington, but \$715,000,000.

Mr. CAREY. In 1860 mining and manufactures were reported together; now, mining and manufactures are separate, which accounts for the difference between \$790,000,000 and \$715,000,000.

Mr. J. PRICE WETHERILL. Well, I take it as I find it officially at the office of the Bureau of Statistics at Washington. Now, sir, we have this increase in Pennsylvania from \$155,000,000 in 1850 to \$715,000,000 in 1870. That is no greater increase than that of Ohio, hardly as much; and I think the argument in that regard also fails.

There is one other point in the speech of my distinguished colleague to which I wish to refer. He compares railroad fares with the rate of interest, and he says if we in the State of Pennsylvania do not wish to discriminate in regard to railroad fares, the same argument will apply that we ought not to discriminate in regard to money, but we should have money at a fixed rate. Now, let us apply that argument for a moment. Suppose we should

say by act of Assembly that the Pennsylvania railroad should never charge more nor less than \$15 from Philadelphia to Chicago. That would be fixing the rate, and as I understand it, that would be exactly in accordance with the idea of my colleague. The New York Central railroad company, by more liberal legislation, perhaps, or by entire freedom from any such restriction, will carry passengers from Philadelphia, via New York, to Chicago for \$12. I should like to know how many passengers the Pennsylvania railroad would carry? That is the point I want to make. If we restrict at a higher rate than the adjoining States for doing the same business, how much business will we do? I tell you, sir, that doctrine would drive the Pennsylvania railroad, with its \$160,000,000 of capital, into bankruptcy. Are we to be told that that should be our policy, and for a like reason that we should not do that in railroads, neither should we do it in interest, and if a needy borrower wants money and cannot secure it except at seven per cent., we should say he must not pay but six, and thus drive money out of this State and into Ohio and New York and New Jersey, where they pay seven per cent.? The borrower goes there, the lender goes there, the money goes there, and we are left just exactly in the same condition as we would be in the other case if railroad fares were arbitrarily restricted.

I regret very much, Mr. Chairman, to take up the time of the Convention, but I desire to place before them the reasons why I conceive we should pass this section.

*First.* It is impossible to enforce the law. I think that is clear. Pick up the paper of this morning and compare the commercial market with the money market. You will find flour there rated at grades; you will find money there, first-class acceptances, seven per cent.; second class, nine per cent.; third class, ten and a half, and collateral, seven and a half. That is a direct violation of law, and yet it is a common occurrence every day. The law cannot be enforced here; neither can it be enforced in the country. I appeal to the lawyers here who have anything to do with the investing of money. They know very well that if a needy borrower goes to a county town to borrow \$1,000, he never comes back with his full \$1,000; not by a long shot. If he can get \$800 or \$850, he is doing pretty well. It is by these incumbrances that are thrown

around transactions in money that we are thus "cribbed, cabined and confined."

Mr. BOYD. I can state to my friend how it is in Montgomery county. It is utterly impossible to borrow any money there at six per cent. on mortgages. The only way by which it can be secured is to pay five per cent. bonus and six per cent. interest, and the money is called in in a year, when, if the borrower desires it for another year, he pays the same rate—five per cent. bonus and six per cent. interest.

Mr. J. PRICE WETHERILL. I am very much obliged to my friend from Montgomery for such a thorough and perfect endorsement of the proposition I have submitted.

Mr. BEEBE. With the permission of the gentleman from Philadelphia, I will state that in the counties of Venango and Crawford the rate of the banks, both national and private, is twelve per cent; as a general rule deducted from the amount of the loan.

Mr. J. PRICE WETHERILL. My second reason, Mr. Chairman, is that there is a natural rate of interest governed by supply and demand, depending upon the profit in it other than lending. It is impossible by statutory limitation to prevent just what has occurred, and is occurring, illegally, in the State of Pennsylvania every day. Money is governed by the laws of supply and demand, and all the laws that you may pass on the statute book are ineffectual to regulate it. What did the United States try to do during the war? When, on account of this beautiful condition of things in the currency, every man, aye, every woman and child, was speculating in gold or oil stocks, and gold ran up as high, I think, as 280, and an attempt was made by law to endeavor to stop it, what was the result? Gold went kiting out of sight at the mere idea of such a proposition having been entertained in Congress.

*Third.* Restriction in money drives capital to States where it can obtain the natural rate of interest. This branch of the argument has been treated by my colleague from Philadelphia (Mr. Knight) exhaustively. I guarantee that the representatives in this Convention from the west and the northern tier of counties will endorse that sentiment, that if the natural rate of interest on the border of those counties is more than six per cent. and they want to obtain money, they must not remain inside of State lines to secure it, but they must go on the other

side of the border to obtain it where it is at a point nearer its natural rate of interest.

*Fourth.* Usury laws raise the rate by increasing the cost to the borrower, by the creation of illegal and circuitous modes to obtain money. Any man who goes on Third street to borrow money knows that. My colleague from Philadelphia (Mr. Knight) has shown the large profit of the middleman or broker, to whom the borrower is compelled, on account of the law, to pay a commission. Wherever there is a circuitous and illegal method of getting money, prudent and careful men keep out of that sort of business, and the Shylocks have the control. Prudent, law-loving men should be allowed to invest their money just as they would buy flour or pork. Money is worth what it will bring, no more. Remove all these laws and you bring out the dead money to which my distinguished colleague (Mr. Carey) has alluded, and you make it live money. Now, honest men will not violate the law and they keep their money dead; avaricious men will violate the law; their only desire is to make money, without regard to the violation of law. They are the men who make the profit out of our present system. For these reasons, imperfectly stated, I hope the section now before us will prevail.

Mr. PATTON. Mr. Chairman: It is said that the usury laws never do regulate the price of money, as they are always evaded by transfers, &c. It is further alleged that there should be no statute regulating the sale of money more than the sale of wheat; that money will regulate its own value; that men are as capable of transacting their business when dealing in money as when dealing in horses or any other article of commercial value, to all of which we respectively beg leave to dissent. It may be partially sound in theory, but rotten in practice.

Mr. President, we must protect the poor man, the toiling millions, against the rapacity and avarice of the heartless speculator and money-shark, who, like Shylock, will ever continue to exact his pound of flesh.

I am an earnest advocate for the enactment of stringent usury laws to protect the agricultural, mechanical and commercial interests of the State.

The able and logical argument, almost exhaustive in its character, presented by the gentleman from Philadelphia (Mr. Knight) yesterday afternoon and concluded this morning, in advocating the

legal increase of interest to seven per cent., satisfied me that such a measure was demanded by the best interests of the people, and I hope it will meet the cordial approval of the committee. It will prevent capital from seeking an investment in our neighboring States, and necessarily render money more abundant, which is the very object we desire to accomplish.

I reside in one of the northern tier of counties bordering on the State of New York, and I have known men of wealth to move with their families and their capital into that State and make it their permanent home so as to be benefited by the larger rate of legal interest which, as you all are aware, is seven per cent. in that State.

Let us then compete with our neighboring States in inducements to bankers and capitalists to invest their surplus funds in the old Commonwealth at a fair and legal rate of interest, and we believe all will be well.

MR. J. N. PURVIANCE. Mr. Chairman: The first section is the one now before the committee. It provides that "in the absence of special contracts the legal rate of interest and discount shall be seven per centum per annum, but special contracts for higher or lower rates shall be lawful. All national and other banks of issue shall be restricted to the rate of seven per centum per annum."

The restriction is only applied to banks of issue, and therefore all the savings institutions would be free and exempt from all limitations and restrictions. I merely call the attention of the committee to this fact. And it may be remarked that there is not a bank of issue in the State, unless the national banks be so considered.

The very able arguments of the distinguished gentlemen from Philadelphia, (Mr. Carey and Mr. Knight,) and the extreme opposite view which each takes of the subject, convince us of the inexpediency of introducing anything into the Constitution on the subject. The one argues that the rate of interest should be fixed by constitutional provision, as absolutely necessary to protect labor against capital, and to promote general prosperity of the State; the other that capital is leaving the State because of our low rate of interest, greatly to the prejudice of capital and labor, and tending to drive commerce and trade and capital to other States. Such diversity of sentiment can only have the effect to satisfy us of the proper course which the Convention

should adopt. In any view of it, let the matter remain as it is, as more properly the subject matter of legislation. The Legislature can better adjust the rates of interest from time to time, to meet the frequent changes that are made in other States. We all feel grateful to the eminent gentlemen who have so well and ably presented their views on the subject, and feel satisfied that it will exercise a very salutary and valuable effect on the future legislation of the State. In voting, then, against the first section, I do not want it to be understood as an expression either for or against the principle, but simply that it is not properly the subject matter of constitutional provision.

MR. BROOMALL. Mr. Chairman: I have no doubt about the propriety of the principle contained in this first section. Gentlemen may differ as to whether the remedy sought for should not be applied by the Legislature rather than by us; but that there should be some means of allowing men to make their own bargains with respect to money, just as they do with respect to everything else, all thinking men must admit. The time has gone by when people could demonstrate to one another that prices may be fixed by law. There are higher laws than the laws of the State or of the United States, that fix prices, the laws arising out of supply and demand, the laws of trade; and nothing that we can do can do anything else than prevent the laws of trade from operating as beneficially as possible upon the article dealt in. The way to get any commodity at the lowest possible figure is not to interfere with the laws of trade with respect to it. Let there be the largest liberty of dealing in it, and the price will come to a minimum. There is no difference whether the commodity be money as coin, or whether it be capital in the shape of credit, or anything else, or whether it be a bushel of wheat; the way to get the commodity at the lowest possible price is to let there be the freest possible trade in it. Interest is the sale price of capital for a period of time, and, like all other prices, it must be regulated by the laws of trade. Suppose we were to apply the same principle that we do to the rate of interest, to anything else; let us for a moment imagine the Legislature of Pennsylvania to say that no man should sell a barrel of flour for a higher price than five dollars; what would be the result? No flour would be sold for five dollars, because it would bring more in other markets; but

the result would be that the laws of trade being tampered with here by legislation the price of flour would be higher here than in other States where it was not interfered with. The consequence would be to put up the price of the commodity higher than it ought to be because the deling in it would have to be to some extent surreptitious and by men who had no regard for the laws of the land. Hence prices would go up.

All of us remember when a few years ago money rated at lower rates than six per cent.; the price then varied gradually from five to six per cent., like everything else, just as wheat varied from ninety cents to a dollar, a little at a time, up one day and down the next; but the moment money got above six per cent., it went to twelve per cent. at a jump. That is the experience of every man who remembers those times, that the moment money got above the rate at which men were legally allowed to deal in it, it went to twelve per cent. at once; and I say here that if the same restriction had been applied to wheat, instead of wheat going up gradually from one dollar to one dollar and ten cents, supposing a dollar to be the legal rate, when it got to a dollar it would go to two dollars at a jump, because only dishonest men and reckless men would deal in it. Hence I say that all interference with the laws of trade raises the price of commodities.

Now, this is not mere theory; we have facts upon which to base the theory. The experiment has been tried again and again in the history of the commercial world and always with the same result. You recollect that in England from about 1800 to 1820 gold was at a premium. That was a period of suspension. During a considerable portion of that time there were penal laws against selling gold at a higher rate than par, and what was the result? In some places gold could not be had at any price and in other places it went up extravagantly, and wherever those laws were attempted to be enforced gold went up. In France, where the same experiment was tried with gold, and where it was made a capital offense to make any distinction between gold and paper in the purchase of any commodity or to sell gold for paper at a higher rate than par, what was the result? Gold went up until it took something like ten thousand paper dollars to buy a dollar in gold, and the only way to do that without rendering a man liable to be hanged was to

go across the channel and do it; take it out of the country or do it in some way surreptitiously. That was why the price went up so.

We tried that experiment ourselves during the war of the rebellion. Gold was at a premium. There are plenty of gentlemen present who remember when gold was about 250. When it was at 250 or perhaps 240, it occurred to certain theorists in Congress—I had the misfortune to be there myself at the time and know all about it—that they ought to legislate against the gambling rings and the dealers in gold; and they passed a stringent law against buying and selling gold on time, a law intended to prevent dealing in gold at higher rates than par; and what was the result; I remonstrated against the law, not openly upon the floor because some of the gentlemen were intimate friends of mine and they persuaded me not to do it; but I told them I would vote for their measure if they would give me five minutes to tell why I would do so. They had called the previous question. When I was asked what I would say, I replied I would say this: "It will put the price of gold up extravagantly so as probably to check importations, and that will do us some good." They would not give me the five minutes, of course, because they wanted the act passed and believed it would bring the price of gold down. It was not two months before the same gentlemen came to me to help them to repeal the law because gold went up from 240 or 245 to 289 or 290. Everybody saw then that it was a blunder. We repealed the law and the rates came down to about what they were when we started that kind of legislation. Every experiment in all ages of the world of interfering by municipal law with the laws of trade has tended to put up the price of the commodity that was attempted thus to be interfered with.

Gentlemen say with truth that borrowers are here asking this measure so that there may be freedom of trade in the borrowing of money, in order that the price may come down. The gentleman from Norristown (Mr. Boyd) says that money commands eleven per cent. in his county. There has been no money lent, as far as I know, in my county at six per cent. for several years, and there cannot be until the laws of trade bring the rates of capital down to six per cent; but the laws of trade being interfered with there is none loaned at seven or eight, or very little; it is at ten, twelve, and even higher than

that, because men are not allowed to make their own bargains. As soon as I am denied the privilege of going to my neighbor and saying "I will give you seven per cent. for your money," just that soon my neighbor has to put his money in the hands of some broker who will charge me twelve. He has to do it by contrivance, by circuitry, and that is the means by which this interference puts up the price of the commodity. Hence it is that borrowers are here asking this and lenders are not. Lenders are profiting by the existing state of things; they want no change. There will be a howl among the lenders of money if this change is made, because their harvest will then have gone by; then the borrower and the lender can talk face to face because the law favors them in dealing directly in that case just as the law favors them in dealing about the price of wheat or any other commodity. Just so long as they are compelled to make their dealings in private and surreptitiously, by contrivance, just that long the price will be above what it ought to be. Hence it is, I say, that borrowers are asking this change, and not lenders.

I intend to vote for this first section. I am not sure that I do not think it would be better to leave the fixing of the rate to the Legislature to be changed from time to time, because I am not of the opinion that money is permanently up to seven or eight per cent. by any manner of means. I think the reason capital is high is because we used up so much of the capital of the country in the prosecution of the war; we destroyed it, and it has got to be made up and replaced before capital comes down to the rates that formerly prevailed. Probably the Legislature ought to fix this rate; but if the Legislature will not, I will fix it here, and at this time, at at least seven per cent.

But, above all things, I am in favor of the second provision of the section; that is, letting the laws of trade regulate the rate of interest as everything else, in order that we may have the rate of interest at the minimum, at the lowest possible rate.

MR. CAREY. Mr. Chairman: We have had very many theories as to what will be the working of this proposed system; but I have not heard any gentleman explain why it is that Connecticut, which one year ago repealed all her usury laws, now finds herself compelled to re-enact them. There is a fact. We have been referred to the opinion of Mr. Gurney. I

dare say Mr. Gurney found that he obtained a larger interest for his money under the new system than the old, and was pleased with it. We are told of the opinions of gentlemen of the Chamber of Commerce, and so on—

MR. J. PRICE WETHERILL. The gentleman asks me why it is that in Connecticut they desire to repeal the usury laws. My reply to him is this: If he will read the report of Mr. John Jay Knox, the comptroller of currency, he will find it there stated that after a careful examination in regard to the value of money in every State of the Union, he is forced to believe that on account of the abolition of the usury laws in Massachusetts, money was cheaper in that State on that account than in any other State of the Union.

MR. CAREY. Very well: now for my reply. Massachusetts has always been the State in which the price of money was lowest; it is the State that has been money-lender for the whole Union; it is the State that has been cursed, according to my friend here, (Mr. Knight,) with the greatest abundance of paper; the State that has been cursed, according to him, with the greatest number of banks; the State that has, according to him, been cursed with the greatest quantity of credit; the State that dispenses entirely with gold and silver and uses paper exclusively; the State, therefore, in which money must always be cheaper than in any other of the Union. It is the only State in the Union in which it was possible to try this experiment with any chance of success. You might as well talk of England, where money rarely gets beyond four or five per cent. and say that she can afford to make money free. Take Illinois and other western States, where money goes up to fifteen or twenty and even forty per cent. Can they afford it? Massachusetts has tried it with better success than it could be tried in any other State in the Union. She has advantages for such a trial that no State in the Union possesses. No other State has such advantages as she, and yet it has worked badly there, and has inflicted injury there. I care little for Mr. Knox's report. I have very little faith in the reports of comptrollers of the currency, for I have never found one of them to be worth a single farthing; and I have as little opinion of the present one as I have of the past. [Laughter.] But here we have the one great fact staring us in the face to-day, that Connecticut only one year ago abolished the usury



laws, did it, fortunately for her, not by an amendment to the Constitution where it could not have been changed, but by a simple legislative act, and, at the end of one year she finds it works so badly that she is on the point of re-establishing it.

This is clearly a question for legislation; it is not a question for the Constitution. If you make a mistake to-day and it results, as it must result, as it did in Connecticut, where will you be a year hence? If a change is necessary, how will you bring it about? Only by leaving this matter to the Legislature and not by putting it in your Constitution. Let the Legislature continue to have control of the usury laws, and if they desire to abolish the usury laws in heaven's name let them do it, and then, if the experiment should prove a failure, we can repeal it in a year. But if you put it in your Constitution and it proves a failure, and it carries ruin with it, as it inevitably will, all over this State, how will you obtain a change? My friend tells us that we are to profit by the development of our resources. In the name of all the gods, where will your resources be if you put money all over the State up to ten, fifteen, thirty or forty per cent., as they have it in the west? This whole subject is purely for legislation; leave it in the hands of the Legislature. They have always known that the people of the whole State were against the repeal of these laws; and the good sense of the people will always be against their abolition.

How is it in New York? Within the last week they have fought that question there more thoroughly than they have ever fought it before, and only the day before yesterday, by a vote in the proportion of three to two, I think, indeed, that the majority was even greater than that, by which the Legislature of that great State refused to make any alteration in the usury laws whatever. The advocates of repeal were obliged to fight that question there, step by step, until it came to a direct vote on the question of a diminution of penalties, when the Legislature so decisively refused even to touch their present laws. You have now the present examples of these two States; you have New York on the one side, where they will not touch this question, and on the other Connecticut, where, having but one year ago abolished their usury laws, they are forced to re-establish them. Just imagine what will be your position if you change our present system, and it results as I say it must and will result.

My friend (Mr. Knight) says that money is lent in this city at five per cent. on first-rate security, and one minute afterward he tells us that mortgages on good security, at six per cent., are selling at ten per cent. discount. I would like to understand what that means. If money can be borrowed here at five per cent., why is it that first class mortgages should sell at ten per cent. discount? The real difficulty consists in this: We are told that supply and demand must regulate the matter; now, I say that our supply is insufficient. We have gone on for the last seven or eight years steadily reducing our supply, whilst the business of the country has been going up, and up, and up, and up, until it is twice, three times, yes, four times more than it was ten years ago. And while our business has increased, we have been allowed much less of the machinery—for it is nothing but machinery—of exchange, than we were allowed ten years ago. We have got a disease, and you are asked to do that which will perpetuate the disease. I say, no! Leave this subject in the hands of the Legislature, and if they find it expedient temporarily to make any change, let them make it; and if that does not get rid of the disease, then let us be in a position to get back again. But this is not a system to be made perpetual. I say that if you put it into your Constitution, there is not a man in this body that will not, if he votes for this measure, pray to God, on his bended knees, night and morning, to forgive him for having made so great a mistake. It will be ruin, ruin, and only ruin. You can do it through your Legislature, and then if it be ruin, it will be but for one year, and you can repair it. But do not put it in your Constitution. It is nothing in the world but legislation. It belongs to the Legislature; leave it there.

MR. KNIGHT. May I be permitted to ask my colleague a question?

MR. CAREY. Of course.

MR. KNIGHT. The gentleman has referred to the State of Connecticut and said that the Governor has recommended to the Legislature that they change the act repealing the usury law. Now, that may be nothing but the individual opinion of the Governor of Connecticut. It has not been acted upon by the Legislature.

MR. CAREY. One moment! If my friend had read the New York papers as carefully, perhaps, as I have done, he would have seen, for the past three or

four weeks, the evidence that this change was intended to be made. A fortnight ago the *Tribune* correspondent—mind you, an opponent—discussed the subject and said, with an expression of regret, that his State was about to have the usury law re-established, and that it was about to become the only New England State with that blot upon our escutcheon, or something to that effect; I do not remember the exact words; and anyhow, it is only one of the usual falsehoods of all that free trade class. [Laughter.]

Mr. KNIGHT. Am I not right, then, that this is only an opinion, and only that as far as the Governor is concerned?

Mr. CAREY. Happening some days ago to meet the Governor of New Hampshire, I asked him if they had been foolish enough in their State to imitate the bad example of some of the other New England States. "No," said he, "thank God we have, not been foolish enough to follow the evil example of Massachusetts." So there is one State in New England that will be in company with Connecticut when they repeal their action of the last session.

Mr. KNIGHT. That is, the Governor has recommended it to be done.

Mr. CAREY. The people have determined that it shall be done.

Now, I say leave us in the same position as Connecticut. Let the Legislature repeal the usury laws, and let us try it, if it must be tried, for one year; but let us be in a position to re-establish them if we find it expedient to have them re-established. I tell you, my friends, as sure as there is a God in heaven, if you make this system a part of your Constitution you will regret it to the last day of your lives.

Mr. HEVERIN. I would like to ask my colleague a question?

Mr. CAREY. Well.

Mr. HEVERIN. I desire to know if any other State but Connecticut has ever complained of the abolition of the usury law, unless indeed it be Michigan?

Mr. CAREY. My heaven! They tried it in Alabama. I will tell you about it if you will allow me time.

Mr. NILES. Go on. Take all the time you want.

Mr. HEVERIN. That is all I want to know. I asked only for information.

Mr. CAREY. Let me give the experience of Alabama. The following passage from a valuable paper on this subject, just now published by Mr. Nahum Capen, of Boston, exhibits the working of repeal

at an earlier period, as tried in some of the Western and Southern States:

"The experiment of repealing the usury laws was made in Alabama; it was continued eleven months. I was informed in 1850, by U. S. Senator Lewis from that State, that they would not recover from the ruinous consequences under a quarter of a century. Nearly forty years ago it was tried in Indiana. In a letter from Hon. W. W. Wick, dated at Washington, D. C., March 7, 1849, who was then a member of Congress from that State, he says, 'In Indiana the usury laws were repealed twelve or fourteen years ago, perhaps more, and were not reinstated for three or four years. The results were frightful.' \* \* \* 'If I had time, I would be glad to make a sketch of the desolations left in the track of the usurer, during his brief reign in Hoosier land. I was judge of one of our circuits at the time, and was a *shuddering witness* to the desolations. I have rendered judgment upon contracts for payment of fifty or twenty cents per day for a loan of fifty or a hundred dollars, and in some instances the interest had become more than ten times the amount of the principal.' \* \* \* 'I know many men of excellent natural qualities, and much inclined to be moral and gay, who became hopelessly demoralized and misanthropical. The moral desolations created by the absence of usury laws will tell upon any community to an extent almost infinitely beyond the ruin of estate.' \* \* \* 'As years pass away, the evil results will develop themselves in a geometrical ratio. Long before they develop their full force and effects, the community will demand usury laws, and the blighting curses of many a withered or aching heart will follow the advocates of their repeal to their graves.' It is to be regretted that the entire and interesting letter of Judge Wick cannot be given. In 1849, repeal was voted by the Legislature of Wisconsin. In January, 1850, the Hon. J. P. Walker, U. S. Senator from that State, wrote a letter speaking of the fruits of repeal. He says, 'The argument in favor of this policy was, that the competition in the loan of money—the rate of interest being unrestricted—would produce a great influx of capital to the State. It certainly has produced an influx of money, but not of capital. The result is (and is to be) that money has been freely taken at an interest of from twenty to fifty per cent. The money loaned was that of non-residents.' A year later a let-

ter was written and published by R. W. Wright, Esq., of Wakusha, in which he says, 'The results of the law were so disastrous to the best interests of the State, and so contrary to the expectations of its friends, in increasing instead of diminishing the rates of interest, that the experiment was very readily abandoned. Its bitter fruits were left behind.' That they were left behind, may be inferred from a remark made by the Governor of that State, in his message in 1856. He said that the State would not recover from the shock for a generation. In Ohio, they removed all penalties for usury in 1851, and allowed an interest by contract of ten per cent. The experiment proved a sad one. In less than four weeks after the passage of the law, parties from that State were in New England and New York, soliciting large loans on real estate at ten per cent."

Mr. HEVERIN. Was not this a mere expression of personal opinion and without the authenticity of any official significance?

Mr. CAREY. They are the statements of men of high character who had witnessed these effects.

Mr. HEVERIN. Simply personal statements.

Mr. CAREY. I remember perfectly well in those times what went on here. I know that money was borrowed at ten, twelve and fifteen per cent. in this city to be carried out west to be lent, and the men who borrowed it lived by the profits or by the difference between getting money here at twelve or fifteen per cent. and getting thirty or forty per cent. for it there.

Mr. BROOMALL. I ask my friend whether he does not know that in eastern Pennsylvania the usury laws are a dead letter and never enforced, that money is loaned habitually, constantly, daily, at rates higher than seven or eight or nine per cent.?

Mr. HEVERIN. And twelve per cent.

Mr. BROOMALL. Even twelve per cent. Then I would like to ask him, what is the benefit of having laws that are not enforced?

Mr. CAREY. The law is to a very large extent enforced.

Mr. BROOMALL. I never knew a case.

Mr. CAREY. The law is to a large extent enforced. My friend from Philadelphia (Mr. J. Price Wetherill) doubts whether there are five hundred millions of dollars loaned on mortgage in this State. I said only four hundred millions of dollars, certainly, and probably \$500,000,000.

My friend quotes the collection of taxes on personal property as proof of his position. We all know that taxes on personal property are all the time evaded. The doubt with me, when I prepared the statement, was whether I should not be more near the truth if I said that the amount was certainly \$500,000,000 and most likely \$600,000,000. I have no doubt in the world that in Allegheny county and Philadelphia county the amount of mortgages is \$350,000,000. I am assured that in Allegheny county there cannot be less than \$150,000,000 and I am equally sure that there are not less than \$200,000,000 loaned in this manner in this city. If you pass this section, every man that holds a mortgage will know that the more apprehension is produced throughout the State, the higher will be the rate of interest. You will throw the whole community into alarm. There are a great many people who will be content with seven per cent. or with eight per cent., but, as the letter that I read from Massachusetts says, there would be no limit to the demands of the greedy. Now this law would simply hand over the working people to the mercies of money lenders. We have had here discussed the interests of the bankers, of business men, of traders, and all that sort of people, particularly those gentlemen that are entirely opposed to having any more money. But we have not had presented the cause of the working men. We have before us now on trial the cause of the workingmen. It is by them that I stand. This is a question of labor and capital, and I stand as I always have stood, by the workingmen, and there will I stand so long as I shall live.

Mr. KNIGHT. In answer to my colleague, I will state that he has gone back so far in giving the individual opinion of gentlemen in Alabama, as to go rather beyond my time; but I will give you the law as it is in 1872, which will go to show that these gentlemen have changed their minds. The legal rate in Alabama is eight per cent., and no higher rate is allowed on special contracts.

Mr. CAREY. Ah, they have had a lesson.

Mr. KNIGHT. The principal can only be collected on usurious contracts, but the legal rate of interest there is eight per cent.

I have no doubt that since we have been discussing the matter of the change of the rate of interest, the usury laws in this city have been violated ten thousand

times. The gentleman says that the Legislature of New York have declined passing a bill repealing the usury laws or changing the rate of interest, or doing what the people asked for. So has our Legislature. For the last thirty years we have been knocking, knocking at the door and we could get no redress. Finally the people have come to the Constitutional Convention, and asked that here in some shape we shall give them relief. The people of New York, I see by the papers this morning, have now appealed from the act of the Legislature and are taking this very subject into the Constitutional Convention of the State of New York, just exactly as we are doing here.

This change in the usury laws, this section asked to be adopted, is not popular with the private banking institutions of this city, or perhaps any part of the State. Calling on the most distinguished bankers here, they said to me—I do not want to mention names because it might not be proper, but I could name five or six gentlemen who said to me—"Mr. Knight, that section, for the good of the people of the State of Pennsylvania, should be passed; but we do not want it in our business; we can make more money with the legal rate of interest at six per cent., violating, as we are obliged to the usury act every hour and every minute of the day; we do not ask for this and it is against our interest that it should be done." The head of a firm which is the largest private banking house in this city, and perhaps the largest in the United States, told me these exact words, and they are sincere. If any great corporation of this State, the Pennsylvania railroad company or the Reading railroad company, or anybody else, wants a million of dollars to-morrow they do not come to you and me and gentlemen here to loan them \$50,000 or \$100,000, and say, "we will take this at seven or eight per cent.," but they are obliged to go to a broker and tell him to get the money, and he brings it to them probably at twelve per cent. and a commission; but if they could meet the parties face to face, just as gentlemen do who deal in iron, and coal, and other merchandise and products of the soil, and make their bargains, if the price and terms did not suit them, they would go to somebody else; they would find the lowest party to borrow from, and would make their terms to suit themselves.

It has been argued here that we require a positive legal rate of interest to protect parties who are not entirely competent to take care of themselves. Suppose a party who is not entirely competent to manage his own business has a house worth \$10,000 and he is disposed to sell it for nine or eight or seven thousand, who is to intervene there and say that he shall not do that? If he wants to get rid of his money, and all his money, at an equally great sacrifice, I do not see any great difference.

I trust this section will pass just as reported by the committee. Then let it be ventilated. So far as I have taken any part in the matter, I am willing to stand my share of it before the public; and when it comes up on the second reading, if we can get a better section in the Constitution, it will afford me very great pleasure to go with any gentleman who will propose it.

MR. HAZZARD. This subject of finance, Mr. Chairman, is an interminable question. It has occupied the minds of the greatest financiers of this country and of Europe, and I believe it is not well settled in the minds of the people of this State. The various theories upon finance seem to me to be as various as the writers on political economy, and there are only a few practical things that have suggested themselves to my mind and that of the committee who reported this section. I will not detain the Convention more than a very few moments.

I must confess that I was somewhat bewildered by the argument made by my friend from Bradford (Mr. Patton.) He said to us that a friend of his, living upon the borders of New York, moved with his money into that State because he could get a larger percentage for his money there than he could in Pennsylvania, and at the same time he advised us to let the rate of interest remain at six per cent. as now. That is the very evil which it seems to me would be corrected if this section were put into the Constitution. In the case he mentioned we lost a citizen and his money on account of the low rate of interest in this State. I should like to see my friend from Bradford going over to the gentleman he spoke of, Mr. A, I will call him, and trying to persuade him to stay in Pennsylvania with his capital of \$50,000 or \$100,000 and take a less rate per cent. than he could get in New York. What argument would he use? Why,

"stay with us in Pennsylvania and put your money in productive industry here, and receive one per cent. less than you can get over the border." I do not think he could persuade his friend to stay; and this seems to me the very effect of placing the rate per cent. in Pennsylvania at six while the surrounding States are paying a higher rate. They pay a higher rate in New Jersey; they pay it in New York, and they pay it in the West. I am informed that there is half a million dollars taken from the single county of Washington into Illinois, and this serves to drain money from our State, and makes the rate per cent. that is really paid for money higher than if our rate were established at seven per cent., which would tend to keep the money at home.

These are some of the common sense, practical ideas that I wish to advance. I am not a financier and I cannot tell all that will be accomplished, but I know this: That our usury laws drive money from Pennsylvania into other States permitting a higher rate of interest, making money scarce here, which inevitably raises the price in our State.

I voted to report this section to the Convention for another reason. It is said by some that it works badly on the poor. Now, I pity the poor; I am poor myself, and I have a very warm side for that kind of people; but I will give you an instance where it did not work very hard upon the poor. I was over in Iowa a few years ago in one county, the county of Scott, and there was a colony of some three hundred and fifty Germans who came over and settled in that county. They had \$400 or \$500 apiece, enough to supply themselves with farming utensils, with horses, and with what was necessary to break up the land, and they went to the banks, and to individuals, and borrowed money, as I am informed, at fifteen per cent.—the men at that time poor men—and now see how they were oppressed. They paid fifteen per cent. for their money, and the very first crop that was taken from that virgin soil was sufficient to repay their borrowed money at fifteen per cent., and they are now living in comfortable houses, almost all of which may be seen from an observatory in the centre of that county, and are in comfortable circumstances.

In that case it has not worked a very great wrong to the poor in Scott county, Iowa. We may bring up a case here or there where the poor are oppressed and have to

pay large sums of money; and some of them, not being discreet or foreseeing, have gone under by paying large rates; but very many of the poor are benefited incidentally by being put into manufactories and by employment being furnished for them in mines, &c. There are men in our own county who have borrowed money at ten or twelve per cent., who are employing the poor at from four dollars to five dollars and fifty cents a day. It is better for them and it is beneficial to these banking institutions.

Many men in our county, in the little village of Cannonsburg and other villages through our part of the county and in the vicinity of Pittsburg, are borrowing money to-day at ten and eleven per cent. from building associations, and in a few years living in their own houses. It is not oppressive on the poor necessarily because money is borrowed at a high rate in many cases.

Mr. Chairman, I am in favor of the section for one other reason; and if the Convention will bear with me I will state that and sit down. I have said that the usury laws draw money from a low-paying interest State into other States paying a higher rate, therefore making it scarce in the former, and under the law of demand and supply it must of necessity raise the price of interest; and I say once again that it is only leaving it open for fair and square business regulation to do what is done now by cunning devices. Why, there is no money loaned in our county, or very little, at six per cent., unless it be on long mortgages and securities to run through many years. There is very little money used in the everyday transaction of our business hired at less than nine or ten per cent. That is about the regular interest in our county, and although the law now stands, six per cent. shall be taken as legal interest, our people are lending their money for all sorts of interest, from six to twelve per cent. above that. The provision is of no use at all because lenders will seek out cunning devices by which they can lend at a higher rate of interest, and they do it. Why not brush that away and allow the sale of money to be transacted in a fair way? Let men do fairly, openly and constitutionally what is at present done cunningly and dishonestly.

Mr. BOWMAN. I should like to know what article and section of the present Constitution regulate the rate of interest in this State?

Mr. HAZZARD. It is regulated by law, and it is said it should not be put into the Constitution because we can go into the Legislature and have that regulated. I wish to answer that argument. It is well known to delegates that from the year 1860 to 1865 money fluctuated more than ever before, the variation was very great during that period in money value, especially during the war, when gold went up to 280. There never has been a time when it would seem necessary to change the legal rate of interest of this country and probably never will be in which necessity requires it so much as this time, and still the Legislature have not made it other than six per cent., although often requested so to do. They never will unless there is another civil war in which the necessities will demand of the Legislature a provision of this sort. But let us put it in the Constitution and allow people to sell their money as they sell anything else they own, and then this business will be done in a fair business way where we now have to seek out cunning devices that our farmers and manufacturers do not well understand. It is troublesome to our banks to regulate their securities on this account, and still it does not vary the price of interest. Our interest is above six per cent. all the time and we must fix our securities by this contrivance. Let it be put in the Constitution and brush away all these devices, and allow the business in regard to money to be transacted as other business is transacted.

Mr. HEVERIN. Mr. Chairman: I do not think that this is a question to be determined by the prophetic ken which threatens to visit upon every person who votes for the section the most deleterious consequences. I must say that I had no idea of making any comments upon it until I heard the very practical remarks of business gentlemen in this Convention. Neither my profession nor my experience enable me to discuss such a question with the intelligence or the ability of those who have preceded me; but I must admit that the plain, common sense arguments of the gentlemen from Philadelphia (Messrs. Knight and J. Price Wetherill) have been very convincing to me, and in my mind they demolish the finest structures that philosophy can rear on the errors of theory or the sanctity of tradition. I have no sympathy with the disposition that refuses to sacrifice a cherished notion to the claims of progress. I am no votary to any theory that relies merely upon the

prestige of antiquity and rejects every contemplated innovation with relentless and intolerable bigotry. I may say with the gentleman from Philadelphia, (Mr. Knight,) who disclaimed any personal consideration as the inspiration of his remarks, that *few lawyers are lenders, but all are borrowers*. Therefore I may safely advocate this measure without hazarding the accusation of selfishness.

I think that this is an important matter to the commercial world; and although I have given it no special study, my impressions and convictions are in favor of any proposition that seeks to remove the trammels of trade and to secure a free exercise of lawful inclinations among business men in the negotiation of life. I believe the system of usury laws is an overgrown and antiquated product of an unenlightened past; and that no legislative enactments, that no traditional customs that strive to still the footfall of time or to check the tread of ages can ever live under popular endorsement or reverential sanction. I believe that no regulation which prohibits a man from receiving what he can get, or that prevents him from paying what he pleases for any commodity, is practicable, or in consonance with the demands of civilization. If one man sees fit to pay eight, ten or twelve per cent. for money accommodation that will enable him to utilize a propitious occasion or repel impending ruin, why should the public, to which all laws are directed, come in and say that it objects, when it concerns only the two persons interested? Why should it come in and attempt to regulate personal matters and private transactions which must eventually benefit the source of opposition? To say that the law should regulate such things is as absurd as to say that the law should define just what a man should receive or should pay for a house. It is equally absurd except that a law of that kind would comprehend with more tender solicitude the necessities of penury and want. Why should we not declare that the law should say that a man should only own so much of stock, so many bonds, so much of personal property? It would be equally rational, because all aggregation of wealth by one man is probably at the expense of some other person. To say that these laws protect the borrower or the needy is to utter an absurdity, for they do now tend and they always have had a tendency to raise the real rate of interest by compelling those in distress to

resort to radical and extravagant methods in order to raise capital, and the bonuses thus paid are really in effect an addition to the nominal interest.

Beyond the influences which arise from a mistaken view of the Mosaic law, I never could understand why there should be any actual prejudice against an unlimited rate of interest. Such a system has left no evidence of its virtues from the days of James I. The impolicy of these laws was long ago exposed by Calvin, the great reformer, and thirty-six years of agitation and experiment in England were necessary to effect their abolition; and I think we can safely adopt what it took England six and thirty years to discover by experimental legislation and which two-thirds of the States of the Union have tried with much success and general satisfaction.

Mr. Chairman, these are thoughts prompted by hasty impressions and a general view of this subject to which I have given no special study. It has already been referred to and mentioned by the gentleman from Philadelphia (Mr. Knight) that the present law upon our statute books is not enforced and has grown obsolete. Why should we not bolt it out and give to our actions the significance of constitutional recognition by voting in this section? As he well said, there are few instances of any suits or proceedings instituted or growing out of the violation of the usury laws. They are a disgrace to our statute books because they are not obeyed and not executed. I think we should wipe them out.

Furthermore, I believe with him that they are driving millions and millions of capital from our State because organized capital will necessarily seek the best fields for investment. I believe that the system is burdening trade, I believe that it is stifling the expressions of industry, that it is perverting the natural tendencies of commerce, that it is prostituting the actual workings and the beneficial attributes of capital; and whether we adopt it here or not it must go down in the rush of progress and the sweep of civilization.

Mr. LEAR. I desire to offer an amendment to strike out all of the section and insert —

The CHAIRMAN. There is an amendment to an amendment already pending, and a further amendment is not in order.

Mr. SIMPSON. Mr. Chairman: I am opposed to engraving in the Constitution of

this State any provision affecting the rate of interest, be it great or small. I cannot help rising in my place here, and saying to the delegates in this Convention, that in the course of my life, in my experience, I have found that the usury laws of the State were beneficial, that they have resulted in great good; and although they have been violated over and over and over again, and probably will be violated over and over and over again as long as they remain upon the statute book, yet I submit respectfully that that is not an argument in favor of their repeal. Are these laws the only laws that are not observed in this community? Why, sir, we all know that there have been on the statute books ever since the foundation of this State, laws against gambling, and yet are they not violated almost, if not quite, every day?

Mr. LILLY. May I ask the gentleman a question?

Mr. SIMPSON. Yes, sir.

Mr. LILLY. Does the gentleman know that they are observed in any one instance?

Mr. SIMPSON. I do.

Mr. LILLY. I do not.

Mr. SIMPSON. I do know of my own knowledge, that in the city of Philadelphia alone, there is to-day, loaned upon mortgage, from two to three hundred million dollars, that if you engraft upon the law of this State a higher rate of interest than six per cent., will cause the money to be called in to be re-loaned out at a greater rate, increasing the burden of the community to just that extent.

Mr. LILLY. I would like to interrupt the gentleman again with his permission. Was 'not that money loaned years ago, when interest was not high?

Mr. SIMPSON. No, sir; some of it has been loaned within the past year, to my knowledge, and is being loaned now every day in this community.

Mr. AINEY. Without bonus?

Mr. SIMPSON. Yes, sir; without bonus. I have borrowed it myself within the past twelve months at six per cent. interest.

Mr. LILLY. How much did you pay to a broker?

Mr. SIMPSON. I paid nothing.

Mr. LILLY. You were very lucky, then.

Mr. SIMPSON. I do not deal through brokers. Now, the idea that is thrown out before this Convention that money is a commodity is a very great error in my opinion, and I propose to show how erroneous it is by an example or two.

It is very well to say that money ought to be like any other commodity; it ought to be dealt in perfectly free, the same as a man has to write a contract to buy wheat, or flour, or iron, or salt, at any price. It is very true that he has that power as to merchandise, but the two things are not alike and in the very nature of things cannot be. If a man has a million of dollars' worth of wheat in store he cannot pay a note of a thousand dollars with it; the banks will not take it; the holder of the note will not receive the wheat. He may have a million dollars' worth of iron; it will not be received in payment of an obligation. A man can transport from this city to Pittsburg a million of dollars at a cost of less than twenty, by putting it into his pocket and taking it there himself, but he cannot transport a hundred thousand dollars' worth of produce of any kind to Pittsburg at any such cost as that. In the very nature of things transportation by railroad or by the cheapest mode of conveyance would not move that amount of iron from Philadelphia to Pittsburg as cheaply as so much money. He may sit down here, and with only the cost of a postage stamp he may transmit hundreds of thousands of millions of dollars. He cannot do that with commodities. The two things are not alike; hence the comparison between money and merchandise is not tenable; it is not fair.

Now Mr. Chairman, I have gone through some experience in the business of this community as a manufacturer. I carried on business for nearly seven years, and my experience is (and I give it here for the benefit of this Convention) that the usury laws are wise; they are proper, and they ought to be observed because, as stated by the gentleman from Philadelphia, (Mr. Carey,) they protect the laboring men. If you repeal the usury laws and throw the doors open as wide as you please in the competition for money, you will just add to the burdens of the laboring men of the community; for what is money? The representative of labor, nothing more. It is made convenient by statute, it is made convenient by usage, and just so many dollars represent just so many days' labor, and the dearer you make money, the harder you make it for the laboring man. The cheaper you make money, the better you make it for the laboring man. If you throw the door open, at one time money may be one rate, at another time it may be at another rate, to the detriment of labor, and I say in the

very nature of things while we exist as a community, having the varied interests that we have here, we must have usury laws; we must have a limitation upon the price of money that is reasonable, that is fair, that is just. Throw it open to competition, allow it to seek any market, at any price, according to a man's necessities, and to say that because the laws are violated is an argument in favor of their repeal, you might as well repeal the laws against gambling, and you might as well repeal the laws against other crimes that are frequently committed, and for which prosecutions hardly ever occur; I need not name them here, because they will strike the mind of every member of this Convention. They are violated over and over again; and if it is an argument in the one case, it ought to be just as good an argument in the other.

My own judgment is that this subject ought to be left entirely to the Legislature. It ought not to be put in the organic law of the State; it ought to be where it is flexible, where at one time, if necessary, one rate may be adopted, and at another time another rate, but still holding a penalty over the man who will violate the law, whatever it may be, for the time being.

I trust, therefore, Mr. Chairman, that the committee will vote down this first section entirely, and leave the subject a matter of legislation.

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

The motion was agreed to. The committee rose, and the President *pro tempore* having resumed the chair, the Chairman (Mr. Cuyler) reported that the committee of the whole had had under consideration the article reported by the Committee on Agriculture, Mining, Manufactures and Commerce, 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.

#### COMPENSATION OF MEMBERS.

The PRESIDENT *pro tempore*. The Chair has appointed the following gentlemen as the committee authorized by the resolution adopted this morning: Messrs. Curry, Cuyler, Struthers, Elliott, Turrell, Baer and Guthrie.

Mr. CUYLER. I respectfully ask to be excused from serving on that committee,



desiring that no city member should be a member of it. I would prefer to be excused.

Mr. J. PRICE WETHERILL. I move that the gentleman be excused. I think that his request is perfectly right. I do not think any member from the city ought to serve on that committee.

[Several Delegates. "Why not?"]

Mr. CUYLER. Simply for the reason that they do not come from a distance here, at large sacrifice of time and at personal expense. Gentlemen who have not their residence here have a right to regulate this matter, with which, as I conceive, members from the city should not interfere. Therefore, I hope I may be excused.

The PRESIDENT *pro tempore*. The Chair will excuse the gentleman and appoint in his place Mr. Dunning, of Luzerne, if acceptable.

Mr. LILLY. I move that the Convention take a recess.

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.

The PRESIDENT *pro tem*. There is not a quorum present.

Mr. HARRY WHITE. I move that the Sergeant-at-Arms be directed to secure the attendance of absent members.

Mr. TEMPLE. I second the motion.

Mr. HARRY WHITE. I will first move that the roll be called.

The PRESIDENT *pro tem*. The roll will be called.

The CLERK proceeded to call the roll and the following members responded to their names:

Messrs. Addicks, Ainey, Bailly, (Perry,) Baker, Bowman, Broomall, Brown, Carey, Carter, Clark, Collins, Corbett, Corson, Craig, Cuyler, De France, Dunning, Edwards, Gilpin, Hanna, Hazzard, Heverin, Horton, Hunsicker, Knight, Lamberton, Lawrence, Lilly, Long, MacConnell, MacVeagh, M'Cleane, M'Culloch, M'Murray, Mantor, Minor, Newlin, Palmer, G. W., Patterson, D. W., Patton, Pughe, Purviance, John N., Read, John R., Reed, Andrew, Russell, Simpson, Stanton, Struthers, Temple, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F. and Worrell—54.

The PRESIDENT *pro tem*. There is not a quorum present.

Mr. HARRY WHITE. I move that the Sergeant-at-Arms be directed to secure the attendance of absent members, not excused, forthwith, and that in the meantime the doors be closed.

Mr. COLLINS. I ask that Mr. Kaine be excused on account of sickness.

The PRESIDENT *pro tem*. It is moved that the Sergeant-at-Arms be directed to secure the attendance of absent members, and that the doors be closed in the meantime.

Mr. MANTOR. I would not be quite so severe as that.

Mr. HARRY WHITE. The rule is positive.

Mr. MANTOR. If the rule is positive then close the doors.

The PRESIDENT *pro tem*. put the question on the motion, and declared it to be not agreed to, not a majority voting in the affirmative.

Mr. BOWMAN. That is the very thing we are testing. Of course there is not a majority voting.

The PRESIDENT *pro tem*. Those voting in the affirmative were not a majority of those present.

Mr. BOWMAN. How do you know that?

The PRESIDENT *pro tem*. By the result of the call of the House.

Mr. LAWRENCE. On what question was that?

The PRESIDENT *pro tem*. On directing the Sergeant-at-Arms to bring in the absentees forthwith.

Mr. LAWRENCE. It does not require a quorum to do that.

The PRESIDENT *pro tem*. Only twenty-four voted in the affirmative. The Chair will put the question again.

Mr. MACCONNELL. If it is in order, I call for a division of the question, so as to have a vote first on sending the Sergeant-at-Arms after the absentees, and then on ordering the doors to be closed.

The PRESIDENT *pro tem*. A division is asked. The question is on the first division, directing the Sergeant-at-Arms to secure the attendance of absentees.

The first division of the motion was agreed to.

The PRESIDENT *pro tem*. The question now is on the second division, that the doors be closed in the meantime.

Mr. STRUTHERS. As I understand, the rule requires the doors to be closed.

Mr. LAWRENCE. It is certainly competent to close the doors in a call of the House.

Mr. MANTOR. As I understand this rule, no member can leave the House under a call of the House. There is therefore no necessity for closing the doors.

Mr. DUNNING. I believe we passed a resolution a day or two ago providing for but one daily session after this week. To-day is the last session under the present plan of two sessions.

Mr. CORBETT. What is the question?

The PRESIDENT *pro tem.* On the motion to close the doors.

Mr. DUNNING. Is not that debatable?

Mr. LAWRENCE. Allow me to read the fifty-seventh rule: "When less than a quorum vote on any subject under the consideration of the House, it shall be the duty of the Speaker forthwith to order the bar of the House to be closed."

The PRESIDENT *pro tem.* Under that rule, the Chair will forthwith order both doors to be closed.

Mr. CORSON. Mr. President: I understand that that is not a rule of this House. That is a rule of some legislative body to which we do not belong. Therefore I make the point of order that it does not apply to us, especially as we are not yet organized this afternoon.

Mr. HARRY WHITE. If the gentleman will allow me I will read the rule: \*

"A majority can constitute a quorum for the transaction of business. A smaller number may adjourn from day to day and be authorized to compel the attendance of members."

That is the rule on that. The other rule has been read by the delegate from Washington, on the subject of closing the doors.

The PRESIDENT *pro tem.* The Chair withdraws the decision he made as to closing the doors.

Mr. HARRY WHITE. The delegate from Washington read the rule on that subject.

The PRESIDENT *pro tem.* That is a rule of the House of Representatives not applicable here. The yeas and nays will be taken on the motion to close the doors.

The yeas and nays were required by Mr. Corbett and Mr. Hay, and were as follow, viz:

#### Y E A S .

Messrs. Baily, (Perry,) Beebe, Bowman, Broomall, Carter, Corbett, Cuyler, Gilpin, Hanna, Hazzard, Heverin, Horton, Hunsicker, Lawrence, McCulloch, M'Murray, Minor, Newlin, Patterson, D. W., Patton, Reed, Andrew, Russell,

Simpson, Struthers, Walker, Wetherill, John Price, Wherry and White, Harry—28.

#### N A Y S .

Messrs. Addicks, Ainey, Baker, Brown, Campbell, Carey, Clark, Collins, Corson, Craig, De France, Dunning, Edwards, Elliott, Hay, Knight, Lamberton, Lilly, Long, MacConnell, MacVeagh, McClean, Mantor, Niles, Pughe, Purviance, John N., Stanton and White, J. W. F.—28.

So the question was determined in the negative.

ABSENT.—Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsey, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Buckalew, Cassidy, Church, Cochran, Cronmiller, Curry, Curtin, Dallas, Darlington, Davis, Dodd, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gowen, Green, Guthrie, Hall, Harvey, Hemphill, Howard, Kaine, Landis, Lear, Littleton, M'Camant, Mann, Metzger, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Purviance, Sam'l A., Read, John R., Reynolds, Rooke, Ross, Runk, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., White, David N., Woodward, Worrell, Wright and Meredith, President—76.

Mr. HARRY WHITE. I move that the colored Sergeant-at-Arms be sent for the absent Democrats, and the other Sergeant-at-Arms for the absent Republicans. [Laughter.]

Mr. BROOMALL. I rise to a question of order. That proposition is against the fourteenth amendment to the Constitution of the United States, involving as it does discriminations on account of race, color, or previous condition. [Laughter.]

The PRESIDENT *pro tem.* There is not a quorum of members present. The Sergeant-at-Arms has been ordered to bring in the absentees.

Mr. CUYLER. May I ask how many are in attendance.

The PRESIDENT *pro tem.* Fifty-six.

Mr. EDWARDS. I understood from a vote of this Convention that they instructed the Sergeant-at-Arms to bring in the absentees. He has not performed that duty from the fact that he has not received any orders from the officers.

The PRESIDENT *pro tem.* He was informed that it was his duty to bring in the absentees.

Mr. TEMPLE. I move that we adjourn for want of a quorum. It is evident we cannot do anything.

Mr. COLLINS. Before the Sergeant-at-Arms goes out, I ask that the name of Mr. Kaine be stricken from the list of absentees in consequence of sickness.

Mr. LAWRENCE. I saw the gentleman from Fayette on the street.

Mr. COLLINS. He is not able to be here, though he is out.

Mr. TEMPLE. I call for a vote on my motion to adjourn for want of a quorum.

The PRESIDENT *pro tem.* It is moved that the Convention adjourn for want of a quorum.

Mr. LAWRENCE. I hope we shall assert our power, and show that we can compel members to come here. If we do not, we might as well adjourn *sine die*.

Mr. HARRY WHITE. What has become of my motion about the colored Sergeant-at-Arms?

Mr. PATTON. I see members are coming in gradually. The member from Susquehanna county (Mr. Turrell) is now in.

The PRESIDENT *pro tem.* It is moved that the Convention do now adjourn for want of a quorum.

The motion was not agreed to.

Mr. COLLINS. Now I renew my motion that Mr. Kaine be excused on account of sickness.

The PRESIDENT *pro tem.* It is moved that Mr. Kaine be excused on account of sickness.

The motion was agreed to.

Mr. CORSON. I move that those members of the Convention who voted "aye" act as a *posse comitatus* for the Sergeant-at-Arms, to aid in bringing in the absentees. [Laughter.]

The PRESIDENT *pro tempore*. There is nothing in order but to obtain a quorum if we can under the rule of the Convention, and the Chair will entertain no other motion. The Sergeant-at-Arms has proceeded to execute the order of the House.

Mr. MACVEAGH. Will it be in order in this condition of the House to consider whether or not any power exists in this Convention to arrest members?

The PRESIDENT *pro tempore*. The Chair is of opinion that it is not in order.

Mr. MACVEAGH. That it is not in order to raise that question?

The PRESIDENT *pro tempore*. If there were a quorum present, of course it would be.

Mr. MACVEAGH. But we have the power in less than a quorum.

The PRESIDENT *pro tempore*. To adjourn.

Mr. MACVEAGH. To adjourn or to take steps to secure the attendance of absent members.

The PRESIDENT *pro tempore*. To send the Sergeant-at-Arms for them.

Mr. MACVEAGH. One of those steps is to send the Sergeant-at-Arms for the absentees. Now, this body possesses no power of arrest. Certainly the House is competent to pass upon that question because—

Mr. LAMBERTON. The Sergeant-at-Arms may arrest.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms has not yet had time to discharge his duty, and the Chair would not consider himself at liberty to go further than he has done.

Mr. MACVEAGH. That is, to give authority. The Sergeant-at-Arms is merely to act as messenger to notify the parties.

Mr. BROOMALL. Oh, no; to arrest and bring them in.

Mr. CUYLER. It might involve very awkward consequences indeed. If the warrant of the President executed by the Sergeant-at-Arms is an unlawful warrant, and there is a false imprisonment, with all the melancholy consequences that attend that, we certainly ought to halt and inquire very carefully before we take such a step! For my part, I think the motion of the gentleman from Dauphin ought to be entertained.

The PRESIDENT *pro tem.* The Chair would not be deterred by that, because he thinks the absentees ought to be exposed for not attending.

Mr. MACVEAGH. There is of course a cheerful side of it. If it gave rise to litigation, it would still all be in the profession. [Laughter.]

Mr. AINEY. We have now been here an hour waiting for a quorum. I move that we adjourn for want of a quorum.

Mr. PATTON. Members are coming in very rapidly now. In a short time we shall have a quorum. I hope the Convention will not adjourn.

The motion to adjourn was not agreed to.

The PRESIDENT *pro tem.* (After a pause.) The Convention will come to order. There is now a quorum present.

#### CENSURE OF ABSENTEES.

Mr. LAWRENCE. I offer the following resolution:

*Resolved*, That we express it as the sense of this Convention that members who absent themselves from the regular sessions without leave of absence, or fail to be present to make up a quorum at the hour of meeting are worthy of censure and are not fulfilling the oath administered to us all to perform our duties with fidelity.

The resolution was read the first time.

Mr. LILLY. I rise to a point of order. As the Chair has declared that there is a quorum present the Sergeant-at-Arms should be directed to open the doors.

The PRESIDENT *pro tem*. The doors were not closed. The order at first given for that was withdrawn.

Mr. BEEBE. I call for a division of the question.

Mr. LAWRENCE. I will modify the resolution by striking out the words about "not fulfilling the oath," and making it "violating their obligations."

Mr. DUNNING. I move to postpone the resolution indefinitely.

The PRESIDENT *pro tem*. The question now is on proceeding to the second reading and consideration of the resolution.

On this question, the yeas and nays were required by Mr. Corbett and Mr. MacVeagh, and were as follow, viz :

#### Y E A S.

Messrs. Addicks, Bailly, (Perry,) Beebe, Bowman, Carter, Clark, Collins, Corbett, De France, Dunning, Edwards, Fell, Gilpin, Hanna, Hazzard, Heverin, Horton, Lawrence, MacConnell, McCulloch, McMurray, Mann, Mott, Newlin, Niles, Russell, Stanton, Struthers, Walker, Wherry, White, David N., White, Harry and White, J. F. W.—35.

#### N A Y S.

Messrs. Achenbach, Ainey, Baker, Broomall, Brown, Carey, Corson, Craig, Cuyler, Dallas, Elliott, Hay, Hunsicker, Knight, Lamberton, Landis, Lilly, Littleton, Long, MacVeagh, McClean, Mantor, Minor, Palmer, G. W., Patterson, D. W., Patton, Pughe, Purviance, John N., Read, John R., Simpson, Smith, H. G., Temple, Turrell, Wetherill, John Price and Worrell—37.

So the question was determined in the negative.

ABSENT.—Messrs. Alricks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Buckalew, Campbell, Cassidy, Church, Cochran, Cron

Miller, Curry, Curtin, Darlington, Davis, Dodd, Ellis, Ewing, Finney, Fulton, Funck, Gibson, Gowen, Green, Guthrie, Hall, Harvey, Hemphill, Howard, Kaine, Lear, McCamant, Metzger, Mitchell, Palmer, H. W., Parsons, Patterson, T. H. B., Porter, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Runk, Sharp, Smith, Henry W., Smith, Wm. H., Stewart, Van Reed, Wetherill, J. M., Woodward, Wright and Meredith, President—60.

Mr. HARRY WHITE. I ask leave at this time to offer a resolution in the nature of a new rule.

Mr. MACVEAGH. I object.

Mr. NILES. Let it be read so that we may know what it is.

Mr. HARRY WHITE. Does the gentleman from Dauphin maintain his objection?

Mr. MACVEAGH. I object.

Mr. HARRY WHITE. Then I move to suspend the rules so that I may offer the resolution, and I ask leave to make a brief statement.

Mr. LILLY. I will call for the yeas and nays on that motion if it is pressed.

Mr. NILES. Let the resolution be read.

The PRESIDENT *pro tem*. The question is on suspending the rules.

A division was called for, which resulted, forty-two in the affirmative, and seven in the negative. So the rules were suspended.

The PRESIDENT *pro tem*. The resolution will be read.

The CLERK read as follows :

*Resolved*, That when, upon a call of the House, it is found that less than a quorum is present, it shall be the duty of the President to order the doors of the Hall to be closed, and direct the Clerk to note the absentees; after which the names of the absentees shall be again called, and those for whose absence no excuse or an insufficient one is made, may, by order of a majority of the members present, be sent for and taken in custody by the Sergeant-at-arms or his assistants appointed for the purpose, and brought before the Convention.

Mr. HARRY WHITE. I move that the rule which requires this resolution to lie over be suspended, and I ask leave to make a statement.

The PRESIDENT *pro tem*. Shall the gentleman from Indiana have leave to make a statement? ["Yes."] The gentleman will proceed.

Mr. HARRY WHITE. I observe in rule forty-one these words: "The roll shall be called at any time upon the demand of any fifteen members. A majority of the Convention shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day, and be authorized to compel the attendance of members."

That is the only authority we have now upon this question, and unless we adopt a rule of this kind we shall have no authority to compel the attendance of absent members.

Mr. DALLAS. May I ask the gentleman from Indiana a question?

Mr. HARRY WHITE. Certainly.

Mr. DALLAS. If the gentleman from Indiana should happen to be in his seat in the Senate of Pennsylvania, how would we secure his presence here?

Mr. HARRY WHITE. That must be attended to when it occurs.

Mr. LITTLETON. As I understand the rule of the House, those present, although they be a minority, have the right to require the attendance of the absent. Therefore I conceive there is no earthly necessity for adopting any such rule as this. It is the rule of the House already that the minority present can require the attendance of those absent.

Mr. BROOMALL. I think that this is a very clear question. We have a rule which provides that a minority may be authorized to compel the attendance of the absentees; but there is no rule authorizing them to do it. This rule simply provides that the minority may be authorized.

The PRESIDENT *pro tem*. There is a quorum present.

Mr. BROOMALL. I understand that there is a majority present which may authorize the minority at any future time to compel the attendance of absentees; but there is no authority provided by which that attendance can be secured. Until that is provided, we are powerless. If the President of this Convention were to send out the Sergeant-at-Arms with a warrant to arrest absentees and were to take them into custody, I think any court in the city would relieve them from arrest. The minority is not the Convention. The Convention itself is omnipotent except as it is bound by the Constitution of the United States; but the minority is not the Convention.

Mr. WHERRY. I rise to a point of order.

The PRESIDENT *pro tem*. The gentleman from Cumberland will state his point of order.

Mr. WHERRY. My point of order is that the question is not now debatable.

The PRESIDENT *pro tem*. The point of order is not well taken. The gentleman from Delaware will proceed.

Mr. BROOMALL. I have only to say as the rule now stands, the majority may at any time adopt a rule authorizing the minority to compel the attendance of absent members. But until that is done the minority cannot compel that attendance.

Mr. STANTON. I move that the Convention resolve itself in committee of the whole for the consideration of the article reported by the committee on Agriculture, Mining, Manufactures and Commerce.

The PRESIDENT *pro tem*. That motion cannot now be entertained. There is a motion pending.

Mr. MACVEAGH. I desire to ask the delegate from Delaware (Mr. Broomall) whether, if we have a rule saying that the minority may compel the attendance of absent members, that is not a warrant to the minority to do it. There is no use for the rule proposed by the gentleman from Indiana. The rule already adopted by the Convention gives all requisite authority.

Mr. LILLY. I move to postpone the motion to suspend the rules.

Mr. HARRY WHITE. The delegate from Philadelphia (Mr. Dallas) has so terrified me by the remark he has made, that I withdraw the motion to suspend the rules.

The PRESIDENT *pro tem*. The motion to suspend the rules is withdrawn, and the resolution will lie over under the rules.

#### COMMERCE, AGRICULTURE, &c.

Mr. STANTON. I now renew my motion to go into committee of the whole on the article reported by the Committee on Agriculture, Mining, Manufactures and Commerce. 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 have again before them the report of the Committee on Agriculture, Mining, Manufactures and Commerce. The question is upon the first section, and the pending motion is that of the gentleman from

Mifflin (Mr. Andrew Reed) to strike out all after the word "lawful" in line three.

Mr. MACVEAGH. Mr. Chairman: I do not propose at all to discuss this question on its merits, or to detain the committee of the whole for any great length of time; but I do think, apart wholly from the merits of this proposition, that the section as now presented raises more distinctly perhaps, and more clearly, than any other section upon which we have yet passed, the question whether we mean to enact a series of statutes or whether we propose to confine ourselves to the making of a Constitution.

The committee of the whole will bear in mind—and I am very sorry that I cannot add here that I am heartily in favor of this provision, because in that event perhaps the little protest that I desire to make would have more weight than it otherwise would have with this committee—that, however thoroughly and earnestly I might be persuaded of the wisdom of this legislation, if I understand my own convictions at all, nothing could induce me to vote for it here and now. I have been persuaded several times before to vote for legislation in this body, but it has always been in deference to the judgment of other gentlemen who declared that the subject was of such a character that methods of corruption, pecuniary corruption, were used to bias the legislative mind and to prevent any further consideration of the question in the Legislature. We have made provisions with reference to corporations that belonged to the Legislature, but it has been uniformly put upon the ground that the Legislature could not be trusted with that particular legislation because of the pecuniary corruption that was brought to bear upon the subject.

But here is a question utterly free from any consideration of the kind. There is no allegation whatever that any corrupt influences have ever been used or are likely to be used to prevent the abolition of the usury law, or its modification; none whatever. It is simply, therefore, an assertion upon the part of this body, that whenever they think a law ought to be passed they will pass it in the fundamental law. I do earnestly protest against that idea getting hold of the popular mind. It has already spread far and wide. Certainly I am not alone in the experience I have had upon the subject. Certainly every other member on this floor must have had protest after protest

from intelligent readers of the proceedings of this Convention against the mass of matter in legislative form and legislative substance that we are incorporating in the Constitution. Certainly everybody here has heard the danger stated over and over again, that the Constitution that we are making will be broken down by its own weight; that the multitude of matters about which we are legislating will defeat the whole instrument. If there is any question imaginable that belongs to the Legislature and not to a Constitutional Convention, I submit that questions affecting the rate of interest for the loan of money belongs to that category. Therefore, whatever my opinion might be upon this subject, as I said in the beginning so I now repeat, I could not, under any circumstances, be induced to vote to put this section in the Constitution.

Mr. CORSON. Mr. Chairman: I heartily concur in the views just expressed by the gentleman from Dauphin. Whilst it is possible that if I were in the Legislature, I might be induced to vote for a section of this kind—I do not know that I would, and I do not know that I would not—I certainly am opposed to putting it in the Constitution of the State. There are many reasons why it should not go there. I suppose that a man may have a right to make his own contract for the use of money; but it may be possible that by providing in the State Constitution that the rate of interest in Pennsylvania shall be seven per cent., we may increase the burdens of the people, already too heavy, and this may so trammel us in the future that we may all wish that we had never adopted any such section; and in order that we may save ourselves from that trouble hereafter, it would be better to leave it exactly where our fathers left it, and not have our Constitution burdened with any such provision.

The CHAIRMAN. Is the committee ready for the question?

Mr. KNIGHT. What is the question?

The CHAIRMAN. The question is upon the amendment of the gentleman from Mifflin, to strike out all after the word "lawful."

Mr. KNIGHT. If this amendment is voted down, I shall ask for a division of the section, the division to take place at the word "lawful."

Mr. MACVEAGH. That is the same thing as this amendment.

Mr. KNIGHT. I would like to take the question directly on both parts of the section.

Mr. MACVEAGH. This amendment accomplishes the samething. It is to strike out the latter part of the section, and a vote upon the amendment is a vote upon the latter part.

Mr. KNIGHT. It is not exactly as I desire it to be, but I suppose I must be satisfied with it.

Mr. DUNNING. Mr. Chairman: I am not, perhaps, as well able to discuss the merits of this question as have been the gentlemen who have preceded me; but I think that this is one of those questions that appeal directly to the common sense of every man who has business interests in this country. It is evident how this question presents itself to the legal minds in this body. The legal gentlemen upon this floor oppose the sentiment embodied in the section, and I have been somewhat at a loss to account for it, because the people generally believe that the views of the legal fraternity reflect what is for the best interests of the business community. If the opinion of the bar is not attended with this result, then it fails to accomplish what it should always accomplish; especially when we remember the importance that is given to the opinions of the leading members of the legal profession everywhere. There are many legal gentlemen upon this floor who have had large experience in questions of this character; but it is not impossible that these gentlemen have not that personal and sensitive interest in this subject that is necessarily felt by those who are actively engaged in the various business pursuits of the country.

I do not speak as a legal gentleman; I come to the consideration of this question simply as a business man, guided, I trust, by that practical common sense which has always marked the business men of this country. It is well understood throughout the length and breadth of this entire Commonwealth, and better understood by no class of gentlemen than by the legal profession—that the statutes which regulate the price of money are wholly disregarded. In none of the ordinary transaction of business is any attention paid to paid to those laws. This is a truth with which every business man is familiar. The laws as they exist upon our statute books do not govern any of the transactions that take place among business men. It is equally true that we

should have no laws which are not obeyed, and if this law which it is proposed here to adopt is of such a character that the business men of the country will refuse to be governed by it, it would be folly for us to incorporate it in the Constitution. I do not make any particular objection to this section on the ground that this is legislation, and therefore not a proper subject for our consideration. Even if I considered it legislative in its character, I do not know that I would object to it if I thought it for the best interests of the Commonwealth that it should be adopted. If it is the duty of members of this Convention to make a fundamental law that shall govern the people of this Commonwealth and out of which shall grow the enactments that shall be placed upon the statute books, let us place ourselves squarely upon that ground, let us refuse to legislate, let us make a fundamental law such as the people will be satisfied with and such as future Legislatures will be able to base laws upon by which to govern the business interests of the community.

But let us look at the history of legislation upon this subject. I recollect distinctly being in the Legislature in 1853, 1854 and 1855, and in two of those years the proposition came before the Legislature to increase the rate of interest from six to seven per cent. I recollect that it received about fifteen or eighteen votes, and in keeping track of the history of Legislatures after that period down to the present time, I find that has been the history of the Legislature. It has not answered the great demands of the people of this Commonwealth. The people who are placed in a position where they want money, when they are forced to buy it wish to be able to buy it with the same freedom that they can buy other matters when they go into the markets, and why not? Why should we not have the same liberty and the same right in regard to buying money as we have in other respects? I take it that it is the only true principle that can govern trade. Why, sir, suppose a man has a property upon which there is a mortgage and that property is endangered, and he can only save that property by securing money at an interest that is not now legitimate by law and that the law does not allow him to procure it at, why should he not have the right to buy that money at a price that will save his property, as well as he has the right to buy any other matter in trade? Why

not? You cannot govern it by law, I care not what price you fix.

It has been stated here by gentlemen repeatedly that the Commonwealth of Pennsylvania is surrounded by States that have a greater rate of interest. We are told that in the State of New Jersey seven per cent. is lawful. We have simply to cross the Delaware to go there and we can get a rate of interest of seven per cent. There are many men who have money that they cannot employ in their business, that do not go into speculative operations, but who are willing to loan it out at interest. Suppose such a man in the city of Philadelphia having \$20,000 surplus, he does not go on Third street, or any other street, to purchase stock; he does not go into the stock gambling operations, or call them by what name you choose—I do not know anything about them—but he does not go into that sort of operation; he has \$20,000; he does not want to lock that money up in his own safe at home; neither does he want to put it into speculations; what shall he do with it? He will lend it to some good friend who will pay him the legal rate of interest. He goes to my friend, (Mr. Knight,) if you please. He tells him: "The legal rate of interest is six per cent; I have \$20,000; but my friend Jones, right on the other side of the Delaware river, will give me seven per cent." Do you suppose Mr. Knight will get it? Oh, no. Why not? Has he less confidence in Mr. Knight? No, but he has more confidence in seven per cent. Consequently, he will cross the Delaware—it will not cost him more than three or four cents to cross the Delaware river—and he will invest his money at seven per cent. instead of six.

When you talk about the Legislature fixing this matter, my observation for the last twenty years teaches me to believe that the Legislature will not do it. Tell me when was the effort ever made stronger than in the last Legislature? I know gentlemen made speeches on that subject on the two sides, and addressed themselves to the common sense of the people of this Commonwealth, and I know that the people throughout the length of the Commonwealth thought on this subject; but when the Legislature came to vote upon the question, as usual they failed to meet the wants of the people, and the proposition was voted down, and we were left at six per cent.; and the result is that if a man prefers to go over the line into the west he can get eight per cent. for his

money, or if he wants to go into New York or New Jersey he can get seven per cent.; and yet in Philadelphia and other parts of Pennsylvania equally competent to pay the same rate of interest men cannot get money because others outside of the State will pay more.

As was well said here by my friend from Philadelphia to-day, it is nothing but the substantial interests of the State of Pennsylvania, that other States do not possess, which keep us up. New Jersey has them not; Ohio has them not; New York has them not; and no other State within the broad Union has them but the State of Pennsylvania. These substantial interests alone keep us up upon a lower standard for money.

The CHAIRMAN. The gentleman's time has expired.

Mr. MANN. It seems to be conceded, Mr. Chairman, by the friends of this section that it is legislation. No gentleman advocating it seems to take issue with that position. That much then, I take it, is clear and may be assumed—that this is legislation.

Now, what argument is made to justify this Convention for putting it into the Constitution? Why, simply, that the Legislature have not raised the rate of interest from six to seven per cent. and authorized parties to make their own contracts as to what may be taken above that rate. That is the only reason given. Why should the Legislature do that unless the people have demanded it? I assert, Mr. Chairman, that the Legislature has reflected the popular will of Pennsylvania on this question, for there is no reason that any gentleman can give why they have not done it. It has been said already in this debate that this is not one of those questions in regard to which any influence is brought upon the Legislature to induce them to do other than reflect the will of the people. I therefore assume that upon this question the Legislature is as likely to reflect the will of the people as this Convention. We receive our authority from the same source, and there is no earthly reason why we represent the people upon such a question as this any better than the Legislature does. No gentleman can give any reason. I assert, therefore, that the Legislature does reflect the will of the people upon this question and will continue to do it.

I believe that the people of Pennsylvania are changing their sentiments upon this question, and on sufficient considera-



tion of the arguments made in favor of this section scattered before the people, I believe they will change their minds on the question of regulating interest. I may be mistaken, but it makes no difference whether they will or not, the point I make is that it is pure legislation and nothing else, and that we might as well legislate upon every interest of the people of Pennsylvania as upon this one, unless it can be shown that the Legislature have disregarded the wishes of the people, and I think no gentleman will undertake to show that in regard to this matter the Legislature have not truly represented the wishes of the masses. The little experience that I had in the Legislature convinced me that the members were exceedingly anxious to reflect the will of their constituents upon this question, and instead of the eighteen votes in 1854 which this proposition received it was carried through one branch of the Legislature in 1867, and it will be carried through both branches of the Legislature just so soon as the people earnestly demand it.

But to insert the section under consideration into the Constitution will load it down unnecessarily. Whether there be a majority in favor of it or not, it will drive away from the support of the instrument which we are to submit to the people a large class of voters that we need, a large class of the most conscientious, upright, earnest men in this Commonwealth. You cannot go out into a single county in this State among the people, the hard-working farmers who are in debt, and find a man who does not believe that this proposition will be to his injury. Go out among the people anywhere and find intelligent farmers and talk to them upon this question, and they will say invariably, "that is against our interests, it is unfriendly to us," and they will be driven away from the support of the instrument which we present to them, by our inserting it in the Constitution.

Now, is there any such pressing necessity for this proposition as will justify loading down our work in that way, driving away from its support that class of men, the very best in the Commonwealth? I have heard within the last week a number of very earnest farmers in Chester county, in Delaware county and in Lancaster county, who were more interested and stirred up upon this proposition than anything else we were talking about, and they invariably said, without any exception, "if you put that proposition into the Constitution

we will vote against it; we do not care how much virtue you put into it, because we cannot stand that load; we are now paying all we can afford to pay, and if you put that proposition into the Constitution we will go against it."

Mr. HAZZARD. Will the gentleman allow me to interrupt him?

Mr. MANN. Certainly.

Mr. HAZZARD. Although the Legislature has not passed this law raising the rate of interest, is it not practically raised by the very persons who the gentleman says are opposed to it paying a higher rate throughout the State?

Mr. MANN. I do not understand the question of the gentleman.

Mr. HAZZARD. I understood the gentleman from Potter to say that it was not asked for by the people, and yet that they are paying a larger interest now all over the State.

Mr. MANN. A portion of them are, but a great many of them are not. But this proposition will raise the interest of every man who is in debt. There is not a mortgage, or a judgment, or a promissory note standing out that will not have the interest raised one per cent. by the passage of this section.

Mr. MACVEAGH. Will the gentleman from Potter allow an interruption for a moment, to ask him whether he has seen a very striking proof of the accuracy of the statement he has just made, in the New York papers of yesterday, which show that in the Senate of that State, the papers agree in stating, a bill of this character was reconsidered after it had been passed, and was voted down on the express statements of many members from the rural districts that on intercourse with their constituents they found it was so entirely odious to them that they had to change their votes.

Mr. MANN. That is the exact truth, as I understand it, and that is the feeling of this Commonwealth among the farmers, so far as I know.

Now, this section would, without any consent upon their part, increase the rate of interest which those in debt are paying upon all indebtedness; and we cannot afford to make that increase upon the debtor portion of the people of Pennsylvania, without their consent. If the section said that the legal rate of interest should remain at six per cent., but that parties might agree to pay a higher rate, it would be less offensive than in the form it now stands. As it now stands,

you cannot afford to put it into the Constitution, and I maintain, Mr. Chairman, that you cannot afford to put any legislation of this character into the Constitution. Legislation of this Convention can only be justified on the ground stated by the gentlemen from Dauphin, (Mr. MacVeagh,) to remedy an evil that the Legislature have refused to remedy upon the demand of the people. I maintain upon this question the people have not demanded it, either by the public press or public meetings, or by petitions sent to the Legislature. By no form that expresses public opinion in Pennsylvania is this change demanded. I concede that men who have given this subject their attention, like the gentleman from Philadelphia, (Mr. Knight,) and other men over the State, have pressed it on the Legislature, and they have gained a great many converts to their view; but the people have never done it, and it will take a great deal of education on the part of the advocates of this measure to bring the people up to its support. There is not time to do it between this and the time when this Constitution ought to be submitted to them.

If this section were amended so as to leave the legal rate of interest at six per cent., and strike out the last part of it, then I should be heartily in favor of it. I am myself in favor of free competition in contracts and the freest liberty on the part of the people to make their own contracts. I would not restrict them by an act of Assembly; and if I were in the Legislature and this was an act of assembly, I would vote for it as I did four years ago, because I believe that it would be for the interest of the people; but I might be mistaken and I am unwilling to put it into the Constitution where there would be no possibility of making any change.

For these reasons, and many others which might be given, I hope this section will not be adopted either in the form that it now stands or after this amendment may be voted up or down, either, it will make no difference so far as I am concerned. My chief objection to it is that it will in any event load down the work of this body with an unnecessary burden, one that is in no way called for, one that there is doubt in the minds of a great many, even if it was an act of assembly, whether it ought to be passed or not; and that of itself is sufficient reason why this Convention ought not to adopt it.

Mr. J. N. PURVIANCE. Mr. Chairman: I desire to occupy the attention of the committee perhaps not three minutes; but I have a view of this question somewhat different from what has been expressed by any gentleman who has addressed the committee.

I take it that if we adopt this section, whatever good might be in our Constitution in itself, it would be a weight to carry down the whole Constitution. It establishes one of the worst systems of usury and upon the largest and most extensive scale that could be conceived of by any one, and places the poor and needy in the power of the money-changers, and they are to be tempted to violate the Divine law. When the Almighty made laws against usury it was not because He wanted money, for all the money of the world was His; but it was the demoralizing effect that was struck down in the usury law.

Here you propose to do what no State in this Union has done, to throw money free upon the market as an article of bargain and sale; and if you do so, depend upon it, the moral community will perhaps see it in the view I have now presented it, and it will carry down the best Constitution you could possibly make and present to the people of the State.

I do therefore hope that the section entire will be voted down by almost a unanimous vote of this Convention.

Mr. STRUTHERS. Mr. Chairman: In the first place, I am opposed to the entire section; in the next place, I am in favor of the pending amendment, which proposes to strike out the second clause, "all national and other banks of issue shall be restricted to the rate of seven per centum per annum." I can see no reason whatever for striking out the banks.

If we are going to make a common strife for money by bargaining, let us have all the money of the country and all the money-loaners in; and let the competition be as general as possible. I should like to know what reason there can be why the hands of the banks should be tied, when you allow every broker and every other money-lender in the country to make his bargains for a larger price. You propose to tie up and exclude from the reach of the people the money in the hands of the banks, and if it has its full effect it will go to force the banks to wind up their business. If the section is to pass at all, I hope this clause of it will not remain. Let

all the money-lenders of the State, both banks and individual capitalists, be placed on an equality. I make that as an objection specially to the proposed amendment.

I am opposed to the whole section, and I will state one or two reasons for my opposition. In the first place, I think this matter of interest ought to be regulated by the national government. It is all wrong, it leads to confusion, it leads to injury in trade and business everywhere, and does more injury throughout the country than any other one thing, perhaps, that we have thirty-five or thirty-six different rates of interest established in the different States of the Union, where the trade and commerce ought to be common. Congress has the right to regulate commerce between the States. Money is the regulator, the medium of commerce, by which, better than in any other way, you can regulate that commerce. It appears to me therefore, that the proper place for considering this matter is in Congress; that we ought not, as States, to be considering it at all. It may be, and undoubtedly is, necessary and proper, until Congress shall have acted on the subject, to have some State laws still remain; but it appears to me to be a very dangerous experiment to place a provision on the subject in the Constitution and make a perpetuity of it. If the general government should, as I think they ought, and as I think upon consideration they will do at no very distant day, adopt a general rate of interest for the whole country, then the State laws ought to conform to it or be abolished; but if you have it in the Constitution of the State, you cannot conform to the general law without altering the Constitution.

In the next place, on the merits of the question itself, it appears to me that the rate of interest in Pennsylvania is quite high enough. The mode of ascertaining what money is worth, if gentlemen will regard it in that way, and put a valuation upon money, is to ascertain what the industrial interest of the country can realize upon an equal amount of capital embraced in their various businesses. I know of no reason why a capitalist should sit in his office and loan his money and make a larger profit upon it than the industrious mechanic, the manufacturer, the farmer and the merchant can make in the exercise of their legitimate business. There ought to be an equality kept up between the capitalist and the laboring and indus-

trial pursuits of the country. Whenever you permit these high rates of interest that will allow the capitalist to pile up his gains much more rapidly than by any possibility any of the industries of the country can do, you are legislating so far in favor of capital against labor, to which I am, and always have been, opposed. If you want to enrich your country, it must be by legislating in that direction which will build up the industrial pursuits and interests, not by tearing them down, not by sacrificing them to the cupidity of Shylocks.

Now, sir, I have in my mind and might relate here, but I do not wish to occupy the time, many instances I have known of manufacturers who were a little hard up, who thought by the use of a little more money they could secure present relief, advance their business, increase their profits and all that. They were tempted to go into the market to borrow money, and they borrowed it. It was loaned to them often in violation of our present laws, at excessive rates, at larger rates in fact than they could possibly make by the successful pursuit of their business. If they had the money on hand, the profits in the exercise of their business would not be equivalent to the amount they were paying for the loan of the money. The consequence inevitably was that all such concerns were entirely broken up and ruined, and their property fell, at fifty per cent. of its value, perhaps, into the hands of the capitalists loaning the money; so that the capitalists made not only their ten per cent., but perhaps fifty or sixty per cent. on their investments or loans, whilst the luckless sons of toil were driven into bankruptcy and their families and dependants thrown out of house, home and all the comforts laid up by years of hard labor, industry and economy.

But, sir, I will not occupy time. I hope the whole of this section will be voted down.

The CHAIRMAN. The question is on the amendment of the gentleman from Mifflin (Mr. Andrew Reed) to strike out after the word "lawful," in the third line, the words: "All national and other banks of issue shall be restricted to the rate of seven per centum per annum."

The question being put, there were on a division: Ayes eight; less than a majority of a quorum.

Mr. HARRY WHITE. I ask that the negative vote be taken also.

The CHAIRMAN. Less than a majority of a quorum voted in the affirmative.

Mr. HARRY WHITE. We have taken the negative side when the request has been made.

The CHAIRMAN. At the request of the gentleman from Indiana, the Chair will put the question on the other side. Those opposed to the amendment of the gentleman from Mifflin will rise.

Mr. MACCONNELL. That is against our rule.

Twenty-seven delegates voted in the negative.

Se the amendment was rejected.

Mr. D. W. PATTERSON. I move to amend the section by striking out the word "seven" in the second line and inserting "six" as the rate of interest. As this question has been discussed, I shall make no remarks on my motion.

The amendment was rejected, there being on a division: Ayes ten; less than a majority of a quorum.

Mr. PATTON. I move to strike out the entire section and insert the following as a substitute:

"The legal interest, within this Commonwealth, shall be at the rate of seven per centum per annum, when paid in advance; and eight per centum per annum, when paid at, before, or after the end of the period for which moneys shall be loaned, or notes, bonds, judgments or other evidences of indebtedness, shall become due or payable; and the penalty for exacting any greater amount or rate of interest, directly or indirectly, as bonus or otherwise, than is herein established, shall be a forfeiture of the excessive interest exacted, and twenty per centum of the principal, for the use and benefit of the borrower, who may sue for and recover the same, with costs, before any magistrate or court of competent jurisdiction; and who shall be a competent witness to prove the demand or receipt of such excessive interest, and, in case the borrower shall fail to prosecute for the recovery of such forfeiture within a year after such illegal exaction, then any other person may, in like manner, sue for and recover the same for his or her own use and benefit."

The amendment was rejected.

The CHAIRMAN. The question recurs 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 next section will be read.

The Clerk read as follows:

SECTION 2. The Legislature may provide for the establishment of mining schools to be located in the coal regions of Pennsylvania for free instruction in mining and the mechanic arts and sciences.

Mr. MACVEAGH. I trust this section will be voted down. It is a mere power that the Legislature possess now in the fullest measure. I do not want to detain the Convention, but indeed I trust we shall vote down every section of this report.

The section was rejected.

The CHAIRMAN. The next section will be read.

The Clerk read as follows:

SECTION 3. No combinations of employers or employed to enable the one to control the business operations of the other, nor combinations to maintain arbitrary prices for manufactures, merchandise or the products of labor of any description, or for labor itself (including professional services) shall be allowed. Nor shall any combination of individuals, associations or corporations to obstruct the free course of trade, or to make or maintain arbitrary rates for freight or passage on rivers, railways or canals be permitted, and the Legislature shall pass laws to prevent and punish such combination.

Mr. MOTT. Mr. Chairman: This section was very carefully considered in committee. The mover of it is not here, and I do not think it ought to be disposed of in his absence. I was opposed to the consideration of this report until some gentlemen of the committee who had had certain sections under their particular charge were present; but the Convention determined otherwise. I believe this is a wholesome section and would result in great good. There is one clause in it that probably will not meet with the approbation of this Convention, constituted as it is. I refer to that clause which says that there shall be no combinations of professional men to regulate the prices of their labor. I do not expect that would meet the approval of this body. But, sir, the business men of the State should be protected against combinations of employees to govern their business, and laborers should be protected against combinations to oppress them. That is all this section means. I move to amend it by striking out the words in parentheses.

The CHAIRMAN. The gentleman from Pike moves to amend the section by striking out the words "including professional services," in the fourth and fifth lines.

The amendment was rejected.

Mr. STRUTHERS. I move to amend in the seventh line by inserting after the words "arbitrary rates," the words "for the use of money or."

Mr. MACVEAGH. If the gentleman will allow me, I suggest to him that it is probably the sense of the Convention to vote this section down.

Mr. STRUTHERS. But if it should not happen to be voted down I want these words in.

Mr. MACVEAGH. I do not think the chance is worth spending time upon on an amendment.

Mr. DUNNING. I am entirely satisfied that it is not worth while to make any statement in favor of this section or any other of this report; but, sir, I do feel like saying, as this was the only committee of which I had the honor of being a member, that I did not very fully concur with all the provisions that are reported in this article. I do not take back, however, anything that I said in reference to the first section. But when I remember that the distinguished chairman of this committee (Mr. Finney) is absent, and when I remember also that the distinguished gentleman from Allegheny (Mr. W. H. Smith) who had the section now under consideration more at heart than perhaps any other, is also absent, I do think it a little unkind for gentlemen to get up here and say there is no use talking about even an amendment to a section of this report because the whole thing is going to be voted down anyway! It seems to me as if those gentlemen ought to be here; or perhaps I ought to say that the report should be postponed. I will not say a word about their absence. Excuse me for putting it in that shape. [Laughter.] Perhaps the proper motion would be to postpone the consideration of this report until those gentlemen were present. I dislike very much to see propositions that I know those gentlemen have so much at heart, slaughtered here in this manner. I believe that if those gentlemen were here, they could present such arguments to this Convention as perhaps would startle gentlemen who think that a proposition of this kind should be voted down without argument.

In consideration of all these points, I move that the further consideration of this report be postponed until those gentlemen return.

Mr. BROOMALL. That is not in order.

Mr. DUNNING. Then I shall make two more speeches upon it. [Laughter.]

The CHAIRMAN. The question is on the amendment of the gentleman from Warren (Mr. Struthers) to insert, after the word "rates," in the seventh line, the words, "for the use of money or."

The amendment was rejected.

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

The motion was not agreed to.

The CHAIRMAN. The question recurs on agreeing to the third section.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 4. The Legislature shall provide by law for such appliances and regulations in mines, manufactories and workshops, and in the erection of buildings, as may be necessary to protect the health and secure the safety of the operatives, and shall by law regulate, and may prohibit, the employment of children under the age of ten years in mines and manufactories.

Mr. HARRY WHITE. Mr. Chairman: I know how impatient we all are; I know that the feeling of a majority of the committee of the whole seems to be against this whole report; but I hope the committee will pause before they summarily vote down this section. This section has merit in it. It is innocent, and it is useful. It can do no possible harm. On the contrary, it may rally to the support of our Constitution many hundreds of votes. This is the only provision that has been made thus far in this Constitution in behalf of the mining interests of this Commonwealth, in behalf of the men who dig under the ground. This is not the only Constitution in which a provision of this kind is to be found. It may not be offensive to observe that a provision somewhat similar to this is to be found in most of the Constitutions of those States where mining is a large interest.

Sir, this section is but a recognition of the virtue of that which the Legislature has already done. It is but a recognition by this Convention of what is known as the law passed by the Legislature for the ventilation of our mines. That law was

the offspring of the great Avondale disaster of 1869.

The necessity of that legislation has been approved by the common sense and intelligence and good feeling of this Commonwealth. This is an injunction to the Legislature that they shall continue to pass enactments of that kind when they are found necessary. No harm can result from it; much good may occur. I hope this section will be adopted.

Mr. DUNNING. I hope, sir, that this Convention will be very cautious how it adopts any proposition of this committee. In looking around me, I see not the distinguished chairman (Mr. Finney.) The member from Washington (Mr. Hazzard) is absent and several others, and while my friend from Indiana (Mr. Harry White) speaks of those gentlemen who are digging underground—

Mr. WORRELL. Mr. Hazzard is here.

Mr. DUNNING. I am delighted to find that Mr. Hazzard is here to respond. There are gentlemen digging above ground on various propositions that have been introduced on the subject of usury, &c., and I think they ought to have an equal right. I hope this Convention will be careful how they adopt any of the propositions in the report of this committee in the absence of a majority of its members. They have rejected most of them, so far, and they have refused to postpone action until those gentlemen return. Many other gentlemen in this Convention have assumed the privilege and the right to absent themselves, and in consequence of their absence we have agreed to postpone important matters in which they were interested; but this is a committee that was put down at the tail end of our list, that a few gentlemen were slipped on to, because there was no other place for them [laughter;] and perhaps the easiest way is to vote down everything they report, as suggested by the gentleman from Dauphin, clean out the whole thing, scoop it up, and just carry out what was originally intended. [Laughter.]

Mr. MACVEAGH. I simply want to say that I shall vote against this for the exact reason given by the gentleman from Indiana, that there is not the slightest earthly necessity for it. The Legislature has already acted upon the subject; and it might be considered as an appeal to the miners to show that we were in sympathy and gave our sympathy to a bill that had been passed three or four years ago in their aid. Now, the miners of this State

are not so ignorant as to regard that matter of any value whatever; and, even if they did, it would not be right for us to put something in the fundamental law which the gentleman himself admits has no possible value in it.

Mr. HARRY WHITE. Mr. Chairman: I should have said nothing further but for the observation of the delegate from Dauphin. He misapprehended me entirely when he remarked that I admitted that this had no force whatever in it. I did not say so.

As to his remark that the miners of this State are too sharp to be caught by a trick of this kind, Mr. Chairman, I regard it as no trick. This is a slur and a reflection upon the hard working miners who are voters, who are our peers, whose votes at the polls are necessary to secure the adoption of this Constitution. I care not for demagoging; it is in no spirit of demagoging that I advocate this. This section has merit. This section contemplates that we are caring for this large interest. We do not desire to demagogue though we desire to legislate for them, as representatives of the sovereignty of this State here assembled, and exercising for our masters a great duty. We desire to show them all that all their interests are cared for by us. I think it is prudent for us to provide in this way, not for the purpose of throwing chaff to the wind, but for the purpose of regarding and protecting the substantial interests of this Commonwealth.

Mr. DUNNING. The author of this section, (Mr. J. M. Wetherill,) who is devoted to the mining interest, is absent, and I hope the question will not be taken in his absence.

The CHAIRMAN. The question is on the section.

The section was rejected; there being on a division ayes twenty-two; less than a majority of a quorum.

Mr. MANN. I rise, Mr. Chairman, to a question of privilege. At the request of the gentleman from Philadelphia, (Mr. Knight,) who desires to have a division of the first section, I move to reconsider the vote by which that section was defeated.

Mr. CORSON. I second that motion.

The CHAIRMAN. Did the gentleman from Potter vote with the majority?

Mr. MANN. I did.

The CHAIRMAN. It is moved to reconsider the vote by which the first section of this article was rejected.

The question was put on the motion to re-consider and a division was called for.

Mr. J. PRICE WETHERILL. I call for a count of the House, for the simple reason that we never can act if we have not a quorum here. It is folly, sir, to sit here and lose important sections merely with a minority of the Convention.

Mr. HAY. I raise a question of order; that a vote is being taken, and nothing is in order while that is being taken except to take that vote. A count of the House cannot be had until the vote is taken and declared.

The CHAIRMAN. The point of order is well taken. The question is on the motion of the gentleman from Potter, seconded by the gentleman from Montgomery, to reconsider the vote upon the first section.

The motion to reconsider was not agreed to, there being, on a division, aye twenty; less than a majority of a quorum.

Mr. HARRY WHITE. Now, inasmuch as it has just been reported that less than a majority of a quorum is present, I move that the committee rise. I submit that the rule is that when less than a quorum is present the Chairman vacates the chair.

Mr. J. PRICE WETHERILL. I ask for a count of the vote.

The CHAIRMAN, (after counting the committee.) There are but sixty-one members present. I call the President to the chair.

The PRESIDENT *pro tempore* having resumed the chair, the Chairman of the committee of the whole (Mr. Cuyler) reported that, upon a count, but sixty-one members were present in the committee of the whole, which not being a quorum of members, he had vacated the chair.

The PRESIDENT *pro tempore*. The Chairman of the committee reports that, on a count of the House, there not being a quorum present, he has vacated the chair.

Mr. CUYLER. I now move a call of the House.

Mr. DALLAS. I second that motion.

Mr. BROOMALL. Mr. President: Is a motion to adjourn in order?

Mr. HARRY WHITE. When a call of the House is ordered, I submit that it is the duty of the Chair to close the doors and prevent the exit of any members.

The PRESIDENT *pro tempore*. The Sergeant-at-Arms will close the doors and keep them closed until some further action is taken. The Clerk will call the roll, to ascertain whether a quorum is present.

The roll being called, the following members answered to their names:

Messrs. Addick, Baily, (Perry,) Beebe, Black, Charles A., Bowman, Broomall, Brown, Carey, Carter, Cassidy, Collins, Corbett, Corson Craig, Cuyler, Dallas, De France, Dodd, Dunning, Edwards, Fell, Guthrie, Hanna, Hay, Hazzard, Horton, Knight, Lamberton, Landis, Lawrence, MacConnell, MacVeagh, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Palmer, D. W., Patterson, G. W., Patton, Pughe, Purviance, John N., Read, John R., Russell, Simpson, Stanton, Struthers, Temple, Turrell, Walker, Wetherill, John Price, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—60.

Mr. MACVEAGH. I ask unanimous consent to state that at this late hour and with this limited attendance, it will be impossible to get a house sufficiently full to attend to any business, and I do submit that it is not worth while to waste our time and temper at this advanced hour in a fruitless effort to secure a quorum.

Mr. HARRY WHITE. I also desire to ask unanimous leave to say that we shall accomplish nothing by remaining here under the rule as it now exists. We have no power to compel the attendance of absent members, and until we have adopted some such rule as I have this afternoon offered, we have no remedy.

Mr. BROOMALL. I insist upon my motion to adjourn.

The motion was agreed to, and (at five o'clock and twenty-five minutes P. M.) the Convention adjourned until half past nine o'clock on Monday morning.

## ONE HUNDRED AND SECOND DAY.

MONDAY, *May* 19, 1873.

The Convention met at half past nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

The PRESIDENT *pro tem.* There is not a quorum present.

Mr. HARRY WHITE. I suggest that the roll be called so that the fact of the absence of a quorum may be definitely ascertained.

The PRESIDENT *pro tem.* The Clerk will call the roll.

The roll was called, when the following members answered to their names :

Messrs. Achenbach, Baily, (Perry,) Baker, Barclay, Bardsley, Beebe, Biddle, Bowman, Brodhead, Broomall, Brown, Carey, Carter, Collins, Corbett, Curtin, Darlington, De France, Dodd, Elliott, Green, Guthrie, Harvey, Hazzard, Hemp-hill, Horton, Kaine, Knight, Lawrence, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Minor, Mott, Newlin, Niles, Patton, Reed, Andrew, Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Struthers, Walker, White, David N., White, Harry, White, J. W. F. and Worrell—53.

The PRESIDENT *pro tem.* There are but fifty-three members present, fourteen less than a quorum. The Chair understands the delegate from Indiana to move that the Sergeant-at-Arms be directed to bring in the absent members.

Mr. HARRY WHITE. Yes, sir.

The motion was agreed to.

The PRESIDENT *pro tem.* The Sergeant-at-Arms will forthwith proceed to summon the absent members to attend.

Mr. DODD. The Sergeant-at-Arms desires me to say that the members just laugh at him; and he wants some authority.

Mr. DARLINGTON. No member can laugh at the Sergeant-at-Arms; he is bound to obey, and the Sergeant-at-Arms is bound to bring him.

The PRESIDENT *pro tempore.* The Sergeant-at-Arms will make report of any member who refuses to obey his summons. He will proceed to execute the order of the House.

Mr. DARLINGTON. (After an interval of fifteen minutes.) I observe that the Sergeant-at-Arms has returned. I will inquire, has he made a report?

The PRESIDENT *pro tem.* Not to the Chair.

The Sergeant-at-Arms thereupon made a verbal report to the Chair.

The PRESIDENT *pro tem.* The Sergeant-at-Arms reports that he has sent a deputy to each boarding house that he is acquainted with, where members reside.

Several members of the Convention having entered the Chamber, the President *pro tem.*, at ten o'clock, announced that there was a quorum present.

The Journal of the proceedings of Friday last was read and approved.

#### APPOINTMENT OF PRESIDENT PRO TEM.

The PRESIDENT *pro tem* laid before the Convention the following communication, which was read:

PHILADELPHIA, PA., }  
216 South Fourth St. }

Being still necessarily absent from the Convention, I appoint the Hon. John H. Walker to act as President *pro tem* until the adjournment on Friday next, twenty-third inst., under the authority of Rule VI.

WM. M. MEREDITH,  
*President.*

*Monday, 19th May, 1873.*

#### PETITIONS AND MEMORIALS.

Mr. CARTER presented a petition of thirteen hundred citizens of Lancaster county asking for the insertion of a clause in the Constitution prohibiting the manufacture and sale of intoxicating liquors, which was laid on the table.

Mr. CUYLER presented a petition of four hundred and two citizens of Philadelphia praying for the recognition of Almighty God and the christian religion in the Constitution, which were laid on the table.

Mr. LAWRENCE presented two petitions of citizens of Washington county upon the same subject, which were laid on the table.

Mr. PATTON presented a petition of citizens of Susquehanna county upon the same subject, which was laid on the table.



Mr. BROOMALL presented a petition of citizens of Chester county asking that the Constitution be so amended as to allow women to vote upon all questions relating to public schools and educational matters, which was laid on the table.

LEAVE OF ABSENCE.

Mr. LAWRENCE asked and obtained leave of absence for Mr. Landis for a few days from to-day.

Mr. KNIGHT asked and obtained leave of absence for Mr. Finney for a few days from to-day.

Mr. BIDDLE asked and obtained conditional leave of absence for himself for a few days from to-day.

Mr. C. A. BLACK asked and obtained leave of absence for Mr. McClean for a few days from to-day.

Mr. DALLAS asked and obtained leave of absence for Mr. MacVeagh for a few days from to-day.

Mr. SIMPSON asked and obtained leave of absence for himself for a few days from to-day.

Mr. NILES asked leave of absence for Mr. Hazzard for a few days from to-day.

COMPENSATION OF MEMBERS.

The PRESIDENT. Resolutions are now in order.

Mr. BROOMALL. I offer the following resolution:

*Resolved*, That the compensation to members of the Convention hereafter be *per diem*, and that it be paid to those only who actually attend or are absent on account of sickness of themselves or their families, with the leave of the Convention.

On the question of proceeding to the second reading and consideration of the resolution, the yeas and nays were required by Mr. Broomall and Mr. Harry White, and were as follow, viz:

Y E A S.

Messrs. Achenbach, Bailly, (Perry,) Baker, Bardsley, Beebe, Black, Charles A., Broomall, Brown, Carter, Corbett, Darlington, De France, Guthrie, Hazzard, Horton, Lawrence, Lilly, MacConnell, McCulloch, McMurray, Mann, Minor, Mott, Patton, Porter, Smith, Henry W., Stanton, Struthers, Walker, White, Harry, White, J. W. F., and Wright—32.

N A Y S.

Messrs. Andrews, Barclay, Bowman, Brodhead, Campbell, Carey, Clark, Collins, Craig, Curtin, Cuyler, Dallas, Dodd,

Elliott, Gilpin, Green, Hanna, Harvey, Hemphill, Kaine, Knight, Lear, Mantor, Mitchell, Newlin, Niles, Reed, Andrew, Ross, Runk, Russell, Simpson, Smith, William H., Wetherill, John Price and White, David N.—34.

ABSENT.—Messrs. Addicks, Ainey, Arlicks, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bartholomew, Biddle, Bigler, Black, J. S., Boyd, Buckalew, Cassidy, Church, Cochran, Corson, Cronmiller, Curry, Davis, Dunning, Edwards, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gowen, Hall, Hay, Heverin, Howard, Hunsicker, Lambertson, Landis, Littleton, Long, MacVeagh, M'Camant, McClean, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Rooke, Sharpe, Smith, H. G., Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wherry, Woodward, Worrell and Meredith, *President*—66.

The PRESIDENT *pro tem*. The result of the vote discloses the fact that there is not a quorum present.

Mr. HARRY WHITE. I offer the following resolution—

The PRESIDENT *pro tem*. It is certainly not in order to do business when the call of the roll shows that there is not a quorum present.

Mr. HARRY WHITE. With all deference to the Chair, I do not understand that we can ascertain the presence of a quorum merely from the calling of the yeas and nays. If there is any question about the presence of a quorum, I suggest a call of the House.

The PRESIDENT *pro tem*. The Chair is of opinion that until it is ascertained, in any mode by which we can to a certainty ascertain, that there is a quorum present, no business whatever can be done.

Mr. HARRY WHITE. I suggest a call of the roll.

The PRESIDENT *pro tem*. The Clerk will call the roll.

The roll being called, the following delegates answered to their names:

Messrs. Achenbach, Andrews, Bailly, (Perry,) Baker, Barclay, Bardsley, Beebe, Black, Charles A., Bowman, Brodhead, Broomall, Brown, Campbell, Carey, Carter, Clark, Collins, Corbett, Craig, Curtin, Cuyler, Dallas, Darlington, De France, Dodd, Dunning, Elliott, Gilpin, Green, Guthrie, Hanna, Harvey, Hemphill, Horton, Kaine, Knight, Lawrence, Lear,

Lilly, M'Connell, M'Culloch, M'Murray, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Niles, Patterson, T. H. B., Patton, Porter, Reed, Andrew, Ross, Runk, Russell, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Struthers, Walker, Whetherill, John Price, White, David N., White, Harry, White, J. W. F. and Wright—68.

Mr. STRUTHERS. Mr. President: It is the rule in all bodies similar to this, and my eyes light upon it at once in the manual, that in a case like this, when it is ascertained by the call that there is not a quorum, the President shall direct the yeas and nays again to be called upon the question.

Mr. HARRY WHITE. That is a special rule.

Mr. STRUTHERS. It is a rule of the State Senate:

"When less than a quorum vote on any subject under the consideration of the Senate, not less than four Senators may demand a call of the Senate, when it shall be the duty of the Speaker forthwith to order the doors of the Senate to be closed, the roll of Senators to be called, and if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Senate, the Speaker shall again order the yeas and nays, and if any Senator or Senators present refuse to vote, the name or names of such Senator or Senators shall be entered on the journal as "present but not voting."

Mr. HARRY WHITE. The delegate will allow me to interrupt him. I suggest that that is a special rule of the Senate. We have not adopted the rules of the Senate. That rule was adopted, I recollect, in 1860. I had the honor of helping to prepare it.

Mr. STRUTHERS. What becomes of the resolution, then, that the yeas and nays were called upon, which is certainly not decided? There was not a quorum voting upon it and it stands undetermined, and I submit that it is in order now before other business is proceeded with, to again call the yeas and nays on that question.

Mr. HARRY WHITE. If the Chair will pardon me, I will suggest to my friend from Warren that it occurs to me the proper proceeding in a case of that kind is for the mover of the resolution, if he desires, to introduce it again. It not having been acted upon by a full house, of course it has not been rejected by a proper body, and until that is done I presume there is nothing before the body.

Mr. DARLINGTON. It seems to me that the pending question before the House is the resolution of my colleague, the gentleman from Delaware. We merely stopped to take the vote, but did not find enough here to vote upon it.

The PRESIDENT *pro tem*. The Chair is of the opinion that the vote is still pending on the resolution of the defegate from Delaware (Mr. Broomall.)

Mr. BROOMALL. I do not want to speak about a question that the Chair has already decided; but it suits me as well as anybody else to have an expression of this House that it is not expected of me to be here when it is not convenient. I would about as lief the matter should stand as it is.

Mr. STANTON. Mr. President: We have no evidence that there was not a quorum present when the yeas and nays were called on the resolution of the gentleman from Delaware.

The PRESIDENT *pro tem*. We have the evidence of the yeas and nays themselves, which show the absence of a quorum.

Mr. STANTON. The mere fact that there was a minority voting, did not show that a quorum was not present, when the next call showed that there was a quorum present.

The PRESIDENT *pro tempore*. If the gentleman from Delaware desires the yeas and nays to be called on his resolution again they will be called.

Mr. BROOMALL. I repeat, I do not desire it, because the rule of the House as adopted satisfies me as well as anybody else. I want to be away sometimes.

#### HOURS OF SESSION.

The PRESIDENT *pro tempore*. Resolutions are in order.

Mr. HARRY WHITE. I offer the following resolution:

*Resolved*, That the Convention shall hereafter hold a session on each evening of the week, (excepting Friday and Saturday,) beginning at seven o'clock, and adjourning at nine o'clock; this session to be in addition to the daily sessions as now provided for.

The resolution was read the second time.

Mr. DALLAS. I move to amend by striking out the hour for adjournment so as to leave that open to the Convention on each evening.

Mr. HARRY WHITE. Very well; I will accept that.

The PRESIDENT *pro tem*. The resolution will be so modified.

Mr. J. W. F. WHITE. I would ask the mover of the resolution whether he intends that we shall meet on Sunday evening? The wording of it would embrace Sunday evening.

Mr. HARRY WHITE. I took it for granted that Sunday was not included; but I will add the word "Sunday" to the exception.

Mr. CARTER. I move to amend by making the hour of meeting in the evening half-past seven.

Mr. HARRY WHITE. I accept that.

Mr. BARDSLEY. I would suggest that the hour be made eight.

Mr. KAINE. Is there an amendment to the resolution pending?

The PRESIDENT *pro tem*. There is not. The resolution as modified is pending.

Mr. KAINE. I move to amend the resolution so as to make it provide, simply, that the Convention will meet at half-past nine o'clock in the morning and adjourn at one P. M.; meet again at three o'clock in the afternoon and sit as long as the body chooses. I desire to say but a word to the Convention upon this amendment to the resolution. I think, Mr. President, that the late arrangement, under which we have been meeting and adjourning, has done very well. I have no objection to meeting half an hour, or even an hour earlier than we have been doing. I am perfectly willing to meet at nine o'clock in the morning and have a session of four hours, lasting until one o'clock; but I am opposed entirely to meeting at half-past nine and sitting until three. For one, as a member of this Convention, that arrangement does not suit me at all, and if it be adopted I shall be compelled to leave the Convention every day at half-past twelve o'clock, for the purpose of getting my dinner at the hour at which I always dine.

Mr. HARRY WHITE. I rise to a question of order. I am not given to making points of order, but must do so now.

Mr. KAINE. State the point.

Mr. HARRY WHITE. My point of order is, that the Convention having voted down the exact proposition now offered by the delegate from Fayette, it cannot be at this time renewed in this form.

Mr. KAINE. In what shape was it voted down?

Mr. HARRY WHITE. We had that arrangement in force before, and it was repealed. That was voting it down.

The PRESIDENT *pro tem*. The point of order is not well taken. The gentleman from Fayette will proceed.

Mr. KAINE. The gentleman from Indiana is disposed to be facetious this morning, I imagine.

Mr. HARRY WHITE. Not at all.

Mr. KAINE. He must be so. Because this proposition, or one very nearly like it—not meeting at half-past nine o'clock, but at ten o'clock—was in force, and repealed the other day, a week or so ago, he raises the point of order that it cannot now be considered. I say he must be facetious, because he certainly cannot be in earnest in making such a point. The gentleman has had too much legislative experience not to know better. I say that meeting at nine and a half o'clock in the morning, or even nine o'clock, and remaining in session until one, will suit the members from the country infinitely better than to meet at half-past nine and remain here until three, although that would very well suit my friend from Philadelphia, (Mr. Dallas,) who has been in the habit of dining at three o'clock, and who wants the rest of the afternoon to attend to his business.

Mr. ANDREW REED. I rise to a point of order.

The PRESIDENT *pro tem*. The gentleman from Mifflin will state his point of order.

Mr. ANDREW REED. My point of order is that debate is not in order, this being a question of adjournment.

The PRESIDENT *pro tem*. The point of order is not well taken. Debate is in order.

Mr. DALLAS. I merely desire to explain to the gentleman from Fayette, in reply to his remark relating to myself, that the constant changes of our hour of adjournment in the middle of the day have sent three cooks from my house to the insane asylum. (Laughter.)

Mr. LILLY. I move to amend by striking out "three o'clock" and inserting "two o'clock;" so as to have the afternoon sessions commence at two o'clock.

Mr. CORBETT. I move to postpone the whole subject for the present.

Mr. HARRY WHITE. I hope not.

The PRESIDENT *pro tem*. That question is not debatable.

On the motion to postpone, the yeas and nays were required by Mr. T. H. B. Patterson and Mr. Harry White, and were as follow, viz:

## YEAS.

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Bardsley, Black, Charles A., Brodhead, Broomall, Brown, Carey, Clark, Collins, Corbett, Craig, Curtin, Cuyler, Dallas, Darlington, De France, Gilpin, Guthrie, Harvey, Hemphill, Knight, Lear, Mann, Newlin, Reed, Andrew, Reynolds, Ross, Runk, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H. and Stanton—35.

## NAYS.

Messrs. Achenbach, Andrews, Beebe, Bowman, Campbell, Carter, Dodd, Elliott, Green, Hanna, Hazzard, Horton, Kaine, Lawrence, Lilly, MacConnell, M'Culloch, M'Murray, Mantor, Minor, Mitchell, Mott, Niles, Patterson, T. H. B., Patton, Porter, Russell, Struthers, Walker, Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Wright—34.

So the motion to postpone was determined in the affirmative.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Armstrong, Baer, Baker, Bannan, Bartholomew, Biddle, Bigler, Black, J. S., Boyd, Buckalew, Cassidy, Church, Cochran, Corson, Cronmiller, Curry, Davis, Dunning, Edwards, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gowen, Hall, Hay, Heveriu, Howard, Hunsicker, Lamberton, Landis, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Pughe, Purman, Purviance, Jno. N., Purviance, Sam'l A., Read John R., Rooke, Sharpe, Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wherry, Woodward, Worrell and Meredith, *President*—63

## CENSURE OF ABSENTEES.

Mr. LAWRENCE submitted the following resolution, which was read twice and considered:

WHEREAS, The members of this Convention have voluntarily accepted the trust imposed upon them by their constituents, and assumed the responsibility of performing their several duties with fidelity under the sanction of an oath.

And, *whereas*, The Convention is very frequently left without a quorum for business, owing to the absence of members, especially at the hours of meeting; therefore,

*Resolved*, That members of this Convention who absent themselves without leave and are not detained by personal illness or sick ness in their families, and

thus retard the business of the Convention, are justly liable to the censure of this body.

Mr. MANTOR. Mr. President: I desire to vote intelligently on this question and I should like to inquire of you, sir, or of this Convention, through you, whether the Convention has power and authority to enforce the attendance of any delegate who absents himself from the Hall without leave of absence. I should like to know how that question stands before I vote.

Mr. LAWRENCE. Mr. President: I have offered this preamble and resolution believing that something of this kind is absolutely necessary. We have arrived at that stage in our proceedings when it is evident to every thinking man that we cannot proceed unless we have some means of keeping members here. Many members have been kept away by illness in their families or personal illness; some members have been engrossed by business and kept away, and I feel very much for these gentlemen; but is it right that a minority of us shall be kept here from day to day waiting half an hour over the time when we should meet, and sometimes an hour, before we are able to proceed with business? It seems to me trifling with the public business. If we are to be kept in this position from day to day, we might as well adjourn *sine die*.

The gentleman from Crawford asks significantly, is there any power in the Convention to enforce the attendance of members? If there is not, Mr. President, we had better adopt rules to give ourselves that power. We have the control of this whole subject. You can hardly imagine any deliberative body that has not a right to compel the attendance of its members. If we find ourselves in that position, all we have to do is to adopt the rules of the House of Representatives or the Senate, extend our rules, and give ourselves that power.

I am as reluctant as any man here to interfere with private rights, and to say a word about members not performing their duty to their constituents or to the Convention; but is it not plain to every man here that something must be done to stop this interruption of our business?

I have offered this resolution merely to bring the question to the minds of the members, and the public if necessary. There are certain members—I might name them—who have assumed the responsibility of members of the Conven-

tion, taken the oath to perform their duties with fidelity, who have not been here three weeks. There are others again who have been away half of the time. There are some who have been away two-thirds of the time; many have been away one-third of the time. Now, I ask is it right to us to have to come here from day to day and wait for a quorum. Some of us have not lost three days during the whole session, and I say it is not right to treat us so and keep us here during the hot season of the year.

Mr. LILLY. While I entirely agree with the preamble and resolution of the gentleman from Washington, still I cannot see that there will be any great benefit to result from passing it, except as it is expressive of the sense of the Convention as to the wrong that is being done to it by members staying away. If there was something in the resolution that would enable us to bring these members here, I would vote for it. It is merely an expression of opinion on the subject, and I am ready to vote for it; but I am afraid that a mere expression of opinion would not do any good. We want a remedy for this evil. It is an evil, no doubt. Everybody must agree that it is an evil that we have to sit here every morning half an hour almost waiting for a quorum, and then when the recess comes we sit again ten or fifteen minutes and on Friday nearly an hour waiting for a quorum. It is certainly a wrong which ought to be remedied; but is this the remedy? It appears to me like the old fable of throwing tufts of grass at the boys in the apple tree; I believe in throwing the stones first.

Mr. CUYLER. Mr. President: I profess to be a practical man, and I should like to vote for a practical resolution. The resolution now proposed seems to me to carry with it no sort of weight whatever. What one member of this Convention will be influenced a hair's breadth in his conduct by the general terms in which this resolution is couched? Will it bring one single man here that is not accustomed to be here? If there are gentlemen who offend against the rules of the Convention, arraign them at your bar, and pass your censure where it belongs and where it will be felt and will carry with it some consequence; but a bare, vague, loose expression of opinion, such as a resolution like this amounts to, will come to nothing whatever.

Now, a little more prudence, if I may be pardoned for so remarking, on the part of

the Convention in arranging its hours of meeting and its time of meeting, would relieve the whole difficulty. For example, the Convention adjourns on Friday afternoon to half-past nine on Monday morning. There are a large number of delegates in this Convention who live within easy distance of the city, and who can get here on Monday morning by ten or half-past ten or eleven o'clock, and yet we adjourn to an hour that makes it impossible for them to get here in time. If we would make the hour of the Monday session half-past ten instead of half-past nine, we should meet with full seats. If we would dispense with our Friday afternoon sessions and let delegates who desire to go home leave at noon on Friday and have their Saturday and their Sunday to themselves at home, it would relieve a great deal of the difficulty, and we should find gentlemen here.

Mr. HARRY WHITE. Will my friend from Philadelphia allow me to interrupt him at this point?

Mr. CUYLER. Certainly.

Mr. HARRY WHITE. I would remind the delegate from Philadelphia that there are a large number of members in this Convention who cannot get home on Saturday and back on Monday morning. Some of us live west of the Allegheny mountains, and we have to stay here from Saturday to Saturday and spend Sunday absent from our families; and it is impossible for us to be accommodated in any other way than by regularly meeting and expediting the business of the Convention.

Mr. CUYLER. Mr. President: There can be no higher evidence that the hour of meeting and the hours of our session are not such as are suited to the convenience of members, than the fact that we waste every day from an hour to an hour and a half in discussing the question. It is the best evidence in the world that we have not hit on the right time. There must be a time that will suit mutual convenience. Let us find that hour, and let us economize the hour or hour and a half that we are wasting in this way.

Mr. KANE. Will my friend from Philadelphia allow me to ask him a question?

Mr. CUYLER. Certainly.

Mr. KANE. I will inquire of the gentleman by what kind of adjournments and meetings he would provide for the attendance of a member of this Convention who has been here but three days since we met, in the middle of April, but three

days in over a month? Other members have been here perhaps a week since we met in the middle of April. If the gentleman can arrange any kind of meetings and adjournments that will induce those members to be here every day, I should like him to do so. I certainly will vote for any proposition of that sort.

Mr. CUYLER. I will answer the gentleman's question. I would arraign that member at the bar of this Convention, and I would have him explain his conduct, and if he did not explain his conduct to the satisfaction of the Convention, I would expel him from the body as one who had forgotten the obligations of his oath and deserved the censure and punishment of the body; but I would not punish gentlemen who do strive to do their duty by a general resolution of censure, in order that this or that offending member of the kind described by the gentleman from Fayette may be whipped over their shoulders.

I move to refer this resolution and the whole question of the hours and times of meeting of the Convention to a committee of five, with instructions to report tomorrow morning.

Mr. NEWLIN. I second the motion.

The PRESIDENT *pro tem*. It is moved to refer this resolution to a select committee of five. That motion is before the Convention.

Mr. LAWRENCE. That is a very convenient mode of getting clear of responsibility.

Mr. CUYLER. If the gentleman will pardon the interruption, I disclaim every such feeling. I am solicitous that by some method we may devise such hours and times of meeting as may suit the general convenience, and I believe we shall save a great deal of time by the action of such a committee, if it is judiciously composed.

Mr. LAWRENCE. I have not indicated any hours of meeting. I was about to say that this would be a very convenient mode of getting clear of the question. My good friend from Philadelphia talks about the hours of meeting and hours of adjournment. I want to know what hour of the day we could name that would bring all the members of the Convention here, as my friend from Fayette says. I know of none. We have tried various times.

The gentleman is in favor of arraigning these members before this bar and censuring them publicly, expelling them if

need be, as he says; and yet he refuses to say that we have power even to censure them. I want this resolution passed that it may go out to the world as a declaration that we have power to censure these members, and then if they will not attend, we will arraign them at our bar and have them censured at some proper time. It is best to say first, at all events, that we have the power, and let the members understand that we intend to exercise it. If the resolution is not strong enough in that respect, let the gentleman move to amend it so as to include anything he desires in that line, and I will vote for it; but I do not want it postponed or referred to a committee.

Mr. BRODHEAD. I am always in favor of expediting the business of this Convention; but I do not think we shall do it by passing resolutions to compel a full attendance. We have been running this concern with about eighty members; something over fifty being constantly absent. I ask you, what would have been the result if the whole one hundred and thirty-three were present? We should not have been through half the reports of committees, and we should have about six volumes of Debates so far instead of three. [Laughter.] I am in favor of doing something which will preserve the *status quo*, having just enough members present to make a quorum. Were we only permitted to designate who the absentees should be, we would accomplish a great saving of the time of this Convention. If we do lose an hour in the morning, once in a while, for want of a quorum, I think on the average we gain by not having a full attendance. [Laughter.]

Mr. DARLINGTON. I am in favor of the postponement of this subject for the present in some way, by reference to a committee or in some other manner; and I shall then offer a resolution for a change in the rule which I think will accomplish the object, in the following words:

"Resolved, That rule forty-one be amended by striking out the words 'a majority,' and inserting 'forty' in lieu thereof."

So that forty members shall be a quorum, and business will proceed at the risk of those who choose to stay away.

The PRESIDENT *pro tem*. The question is on the reference of this resolution to a select committee of five.

The motion was not agreed to; there being on a division, ayes twenty-five, less than a majority of a quorum.

Mr. DARLINGTON. I move to postpone the further consideration of this resolution for the present.

On the motion to postpone, the yeas and nays were required by Mr. Lawrence and Mr. De France, and were as follow, viz:

Y E A S.

Messrs. Baker, Barclay, Black, Charles A., Brodhead, Brown, Campbell, Carey, Clark, Corbett, Craig, Curtin, Cuyler, Dallas, Darlington, Dodd, Gilpin, Green, Guthrie, Harvey, Hemphill, Knight, Lear, Mann, Mitchell, Mott, Patterson, T. H. B., Patton, Reynolds, Ross, Runk, Smith, Henry W., Smith, Wm. H., Stanton and Wetherill, J. M.—34.

N A Y S.

Messrs. Achenbach, Andrews, Bailly, (Perry,) Bardsley, Beebe, Bowman, Broomall, Carter, Collins, De France, Elliott, Hanna, Hazzard, Horton, Kaine, Lawrence, Lilly, MacConnell, M'Culloch, M'Murray, Mantor, Minor, Newlin, Niles, Porter, Reed, Andrew, Russell, Simpson, Smith, H. G., Struthers, Walker, Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Wright—36.

So the motion to postpone was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bartholomew, Biddle, Bigler, Black, J. S., Boyd, Buckalew, Cassidy, Church, Cochran, Corson, Cronmiller, Curry, Davis, Dunning, Edwards, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gowen, Hall, Hay, Heverin, Howard, Hunsicker, Lamberton, Landis, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Sharpe, Stewart, Temple, Turrell, Van Reed, Wherry, Woodward, Worrell and Meredith, *President*—62.

The *PRESIDENT pro tem.* The question is on the resolution.

The resolution was agreed to.

Mr. CUYLER. I move that a copy of this resolution be sent to every member of this Convention.

Mr. LILLY. I rise to a point of order. The resolution has been adopted, but not the preamble. Parliamentary rules require that a resolution shall be adopted first and the preamble afterwards.

Mr. BROOMALL and others. It is too late to raise a question of order.

Mr. CUYLER. I move that a copy be sent to every member of the Convention.

The *PRESIDENT pro tem.* It is moved that a copy of the preamble and resolution just adopted be sent to each delegate of the Convention.

Mr. JOSEPH BAILY. Has the preamble been adopted? ["Yes!"]

Mr. LILLY. That was the point I raised.

The *PRESIDENT pro tem.* The question is on the motion of the delegate from Philadelphia (Mr. Cuyler.)

The motion was agreed to.

#### AMENDMENT OF RULES.

Mr. DARLINGTON. I offer the following resolution:

*Resolved*, That rule forty-one be amended by striking out the words "a majority" in the third line and inserting the words "forty members" in lieu thereof.

This must lie over one day.

The *PRESIDENT pro tem.* The resolution will lie over.

#### BOUND DEBATES AND JOURNAL.

Mr. NEWLIN. Mr. President: I offer the following resolution:

*Resolved*, That the Journal and Debates of the Convention ordered to be bound, be bound in half binding, leather backs and tips, with paper sides and gilt labels and marble edges; and that as soon as they are bound thirty copies of each volume of the Debates and five copies of the Journal be forwarded by express to the residence of each member.

The resolution was ordered to a second reading and read the second time.

Mr. LILLY. That resolution has been adopted before.

Mr. NEWLIN. Mr. President: That resolution in substance was adopted before, but it was reconsidered in order to allow the Committee on Accounts to have the Convention pass upon the question of paying the Printer. That question has been settled, and it is proper that this resolution should now pass. It has been passed once, but owing to the reconsideration it must be passed over again in order to enable the Printer to dispose of the books.

The resolution was adopted.

#### SECURING A QUORUM.

Mr. DARLINGTON. Mr. President: I move that the House resolve itself into committee of the whole on the article reported from the Committee on Agriculture, Mining, Manufactures and Commerce.

The PRESIDENT *pro tem.* The second reading of resolutions is now in order.

MR. HARRY WHITE. Mr. President: I have been waiting for the order of business to be gone through with, so that the additional rule which I offered on Friday might be taken up.

The PRESIDENT *pro tem.* The second reading of resolutions is now in order.

MR. HARRY WHITE. I move that the Convention proceed to the consideration of the additional rule which I offered on last Friday.

The PRESIDENT *pro tem.* The second reading of resolutions offered some days since will now be had.

The following resolution, offered on Friday last by Mr. Harry White, was read the second time:

"Resolved, That when, upon a call of the House, it is found that less than a quorum is present, it shall be the duty of the President to order the doors of the Hall to be closed and direct the Clerk to note the absentees, after which the names of the absentees shall be again called, and those for whose absence no excuse or an insufficient one is made may, by order of a majority of the members present, be sent for and taken in custody by the Sergeant-at-Arms, or his assistant appointed for the purpose, and brought to the Convention.

The resolution was agreed to.

MR. HARRY WHITE. I move that that be inserted in the volume of rules as rule forty-three.

#### AGRICULTURE, COMMERCE, &C.

MR. ANDREW REED. I move that the Convention go into committee of the whole on the article (No. 11) reported by the Committee on Agriculture, Mining, Manufactures and Commerce.

The motion was agreed to, and the Convention resolved itself into committee of the whole on the article reported by the Committee on Agriculture, Mining, Manufactures and Commerce, Mr. Cuyler in the chair.

The CHAIRMAN. The committee of the whole have before them the article reported by the Committee on Agriculture, Mining, Manufactures and Commerce; and the fifth section is under consideration. The section will be read.

The CLERK read as follows:

SECTION 5. The Legislature shall regulate by law the manufacture and sale of carbon oil so as to insure the safety of life in its use for light.

The CHAIRMAN. The question is on the section.

The section was rejected.

The CHAIRMAN. The next section will be read.

The Clerk read section six, as follows:

SECTION 6. The Legislature shall provide by law for an equitable assessment of benefits in favor of mine owners and operators whenever, by works and expenditures in mines, draining, or tunneling, they produce results which enure directly or indirectly to the benefit and advantage of any contiguous or adjoining mines.

MR. J. M. WETHERILL. Mr. Chairman: It is well known to all the legal gentlemen present that there is a principle of the common law which prescribes that no man can so use his own property as to injure his neighbor. There is, however, no rule of the common law nor of any statute, nor in any Constitution that I am aware of, which prescribes that where an individual, by any operations connected with his property, benefits his neighbor's property, his neighbor shall contribute some portion of the expense which has induced this benefit. This section proposed to be embodied in the Constitution has been framed on that idea. It frequently happens that in the mining regions the owner of one tract of land erects improvements upon his land in such manner as to very materially benefit his neighbor. These results are procured sometimes by the sinking of shafts and of slopes which drain the water from the neighboring mines, frequently by the driving of tunnels which produce a like advantage. It is in these cases where now neither by law nor Constitution provision is made for the person benefited to assist in the expense which produces the benefit, that this section has been proposed to be introduced in the Constitution.

I hope it will be adopted because it covers a difficulty which has been very much felt in the mining regions of the State as to coal, zinc and iron.

MR. CAREY. Mr. Chairman: This is nothing but a question of mere legislation. It is not for us to direct the Legislature what they are to do. It is their business to provide for all such matters, and I do earnestly hope that the section may be voted down. We are loading the Constitution with so much legislation that it will certainly be rejected if we persist in that course.

MR. BRODHEAD. Mr. Chairman: I hope that the committee of the whole will con-



sider this question well. Possibly this question may not affect many counties of the Commonwealth; but it does affect, and very materially so, a few counties, and mine is one of them. The right incorporated in this section exists in every mining country in the world where mining has reached to any great perfection. It exists in Austria; it exists in France, and it also does in Mexico, and it is simply necessary to protect the honest miners from the pirates who lay themselves alongside. When you go into the porous soil where the hematite ores are always found, and whenever a miner commences operations and carries on his enterprise to any considerable extent, some other man plants himself on the next land and follows the lead of the first, keeping about fifteen or twenty feet above the level of the pioneer's operations. The consequence is that the latter has to remove all the water which accumulates in both properties, and if he does not, he will be drowned out.

Mr. DE FRANCE. May I ask the gentleman from Northampton a question?

Mr. BRODHEAD. Certainly.

Mr. DE FRANCE. Will the gentleman say whether this subject is not one which can be safely left to the Legislature instead of putting it in the fundamental law?

Mr. BRODHEAD. I will answer the gentleman's question by simply saying that we go to the Legislature one winter and get an act passed on its merits and it will become a law of the State. The next year the pirates will go to Harrisburg and buy an act of legislation repealing the whole-some statute; and then we are forced to wait until the next session of the Legislature, when the effort to secure proper laws on the subject must be renewed. This matter ought now to be definitely settled, and settled right here. Other mining countries have such a provision. It is not to be found in the Constitutions of other States in this Union because there are no other States where mining is carried on as it is in our own Commonwealth. Our coal districts may not need this protection, but the iron districts do, and they should receive it.

Mr. LILLY. Mr. Chairman: As the gentleman from Northampton has said, this is a matter of very great importance to a few counties of this Commonwealth. The protection that this section confers upon honest miners is entirely just. The only difficulty that occurs to me is that it is a matter more of legislation than of

constitutional enactment. There is, however, this trouble as far as the Legislature are concerned: There are so few counties in the State which have any interest in this subject that you cannot get the Legislature to pass upon it. The General Assembly, at session after session have been importuned, time and again, to perfect legislation on this subject, and they do not do so for the reason I have just stated.

To illustrate what has been expressed by the gentleman from Northampton, I will instance the case of the Pennsylvania and Lehigh zinc company. They have gone to the expense of putting down pumps that have cost from \$500,000 to \$1,000,000. They have erected also probably the largest engine in the United States, and they have the largest pump in the United States. With that improved and powerful machinery they can and do drain the entire country around them. The result is that A, B or C can locate alongside of the mines of this company and mine their ore at no cost at all. Is this right? Is it proper that other people owning adjoining property should not help to pay for the expense of draining their mines?

As I said before, the only doubt that I have about this section is that it is rather legislative in its character, than a matter of constitutional law. But something ought to be done to correct this evil. It exists to some extent in all the coal regions, but it is only in the iron districts that the full force of this evil is experienced. There when an honest miner develops his property and opens his leads, puts in his pumps and drains his mines, the man who owns the adjoining mining property opens his leads not quite as deep as his neighbor, and keeping always above him, mines at the expense of the man who has introduced pumping machinery. Certainly, there is no equity in that and certain it is that some provision should be made to give the miner who expends money in pumping improvements some compensation for the benefits that his neighbors receive without outlay.

Mr. WRIGHT. Mr. Chairman: I desire only to say that if the Legislature chooses to pass such a law as is contemplated in this section, I suppose we cannot help it. But I should be exceedingly sorry that a provision like this should be made to extend to the few individual owners of coal lands that are now left in the county of Luzerne. The mining of coal in that

county has now reached such a stage that I believe there is but one solitary individual in that county who mines and transports coal to market. All the individual operators have fallen into the hands of, and been absorbed by, a few monsters; a few companies that now carry on the entire mining interests of the county. They choke and strangle individual enterprise as a matter of course. No man can carry his own coal to market because the companies shut him off from their roads. That has produced this practical result, that whenever a large coal company drive their gangways to a neighbor's lot they take a lease from him in advance. Unless that is done, his coal property lies dead. It avails him nothing until the company choose to lease it. When a company drive up their gangways to another lot of coal lands, if they are permitted to say that their so doing has increased the value of the lands to which they come, virtually that amount of increase in value, whatever it may be, will be abated from the price that the company choose to give for the lease of that lot.

I say, if the Legislature choose to pass an act declaring that a coal company mining up to another man's land shall receive a deduction on the price of the lease of coal lands, we cannot help it. But we can help making it obligatory on the Legislature to pass such onerous and oppressive laws. I do not know anything about the effect of this section as applied to iron districts, because in Luzerne we have no iron mines. I simply speak in reference to my own county where our business is the mining and raising of coal, and I say that to the owners of coal property in that county this provision will be exceedingly oppressive, and they will not be able, if it be adopted, to raise their coal and transport it to market, but must rely entirely on the companies for so doing.

Mr. LILLY. Will the gentleman from Luzerne allow me to interrupt him?

Mr. WRIGHT. Certainly.

Mr. LILLY. I only desire the gentleman to correct one statement. He has said that there is but one individual operator in Luzerne county who is engaged in mining and transporting coal to market. I desire to state that of my own knowledge there are at least ten such operators in the lower end of Luzerne county, if there are not in the Wyoming valley.

Mr. WRIGHT. I am not so familiar with the operations on this side of the water. But in the great valley, where lie

the largest anthracite fields that are known on the face of the globe, the result is as I have stated.

Mr. BRODHEAD. I was very sure that the gentleman from Luzerne (Mr. Wright) did not understand anything about this section, and I am glad that he has confessed that he knows nothing of its application to the iron districts of the State. This section is not designed to apply to coal lands. There certainly is not one case in ten thousand where it will affect a coal mine. The coal miners protect themselves when they construct their leads, by the walls and partitions which they leave, and the waters from adjoining mines cannot float in upon them, neither can the waters that accumulate in their mines be pumped out from adjoining territory. This section applies to iron ore mines, and I desire it to stand upon its own merits. I do not want to have any clap-trap about corporations monopolizing everything and grinding down everybody brought in here to affect a section which does not concern them at all.

Mr. BROOMALL. If we are prepared to compel the Legislature to assess upon neighboring lots the cost of an improvement which I may put upon my own premises, which indirectly, in the language of this section, benefits the owners of neighboring lots, then I think we may well vote in favor of this section, for the principle is the same. If a man by benefiting himself upon his own property, erects buildings which are a benefit to his neighbors, let us in all cases assess upon these neighbors a part of the cost of the improvement.

Mr. MINOR. My friend from Northampton (Mr. Brodhead) says that this section is designed to apply exclusively to iron mines. If it is, then I do not desire to vote for it. I do not know what will become of the oil wells if they are not included in some such protection as that which is intended to be given by this section. They are now injured to the extent of thousands and hundreds of thousands of dollars by flooding, and I think it would be a mistake to put into the Constitution anything which would limit the protection afforded by this section to the iron men.

The Legislature have already given us some assistance, and as opportunity develops, I suppose they will give us more. But although I know that in our section of the State we need something of that

kind, I say let us not hamper the Legislature by partial directions in regard to it; but leave them at liberty to prescribe all the remedies that in the future may be found necessary.

Mr. HARRY WHITE. I am not about to discuss this subject, but I do desire to remind the committee of the whole of what it did on last Friday, when this report was under consideration. Section four, which provided protection to miners, was voted down. The committee refused to put into the Constitution a section requiring the Legislature to legislate for the benefit of the miners, assuming, possibly correctly and with propriety, that the Legislature already had sufficient power in reference to this subject. This section now under consideration appears to be for the benefit of the operators, and I submit that if we refused to do anything for the benefit of the miners we should also allow the operators to protect themselves. We should remit the whole subject to the Legislature, and I hope that the section will be voted down.

Mr. DARLINGTON. I move to amend by striking out the word "shall" and inserting the word "may," so as to make it not obligatory upon the Legislature but optional with them.

The amendment was rejected.

The CHAIRMAN. The question is upon the section.

Mr. BAKER. Let it be read.

The CLERK read as follows:

"The Legislature shall provide by law for an equitable assessment of benefits in favor of mine owners and operators whenever, by works and expenditures in mines, draining or tunneling, they produce results which enure directly or indirectly to the benefit and advantage of any contiguous or adjoining mines."

The section was rejected.

Mr. ANDREW REED. I offer the following as a new section:

"In the absence of special contracts the rate of interest shall be fixed by law, but no penalty shall be prescribed for the taking of any higher rate of interest than ten per cent."

I do not propose to take up the time of the Convention by saying one word in favor of this section. I desire only to have a distinct vote upon it, the subject having been fully ventilated last week. This new section avoids some of the objections which were raised to the first section of the article reported by the Committee on Agriculture, Mining, Manufactures and

Commerce, as it does not change the rate of interest, leaving that subject to the Legislature, and at the same time the section prevents the Legislature from time to time altering the penalties for usury.

Mr. W. H. SMITH. Mr. Chairman: I do not desire to occupy the time of this Convention, but I would like to make a few remarks in regard to this matter. The first section of this article has been voted down in this committee of the whole and I cannot move to reconsider because I was not present when action was taken in reference to it. But I desire to say that the treatment which that section received was harsh and unjust toward the Committee on Agriculture, Mining, Manufactures and Commerce. If there is any gentleman here who will move a reconsideration of the first section with regard to interest, I will say that that committee gave to this defeated section a great deal of time. They canvassed the Convention upon the subject, and carefully consulted their constituents to find out what were the true sentiments of the people on that question, while the section was pending in committee. Nay, more, those members of the Convention who were opposed to the section asked that the Committee on Agriculture, Mining, Manufactures and Commerce would give them notice when the subject was about to be called up and not spring it on them in their absence. This was faithfully done by that committee, and yet after all that the committee of the whole, in the absence of several members of the Committee on Agriculture, Mining, Manufactures and Commerce, called up this article and defeated it. There were three of the members of the committee who I know were not here to vote in favor of it, and I am further informed that it is very doubtful whether there was a quorum present when the article was passed on.

Mr. Chairman, having made this statement, I appeal to members of the House to move a reconsideration of that section of the article.

The CHAIRMAN. The Chair will state to the gentleman from Allegheny that a motion to reconsider was made and voted down.

Mr. W. H. SMITH. Gentlemen here will move a second reconsideration.

The CHAIRMAN. The Chair regrets to say to the gentleman from Allegheny that a motion to reconsider would not be in order. One motion to reconsider having been made by the gentleman from Pot-

ter, (Mr. Mann,) and the House having refused to reconsider, another motion to reconsider is not in order. The question now before the committee is the new section moved by the gentleman from Mifflin (Mr. Andrew Reed) as an amendment.

Mr. H. W. SMITH. Can I not move to amend that section?

The CHAIRMAN. The Clerk will first read the new section offered by the gentleman from Mifflin for the information of members.

The CLERK read as follows:

"In the absence of special contracts the rate of interest shall be fixed by law, but no penalty shall be prescribed for the taking of any rate of interest not exceeding ten per cent."

Mr. W. H. SMITH. Mr. Chairman: I now move you as an amendment, to take the place of that just read:

"In the absence of special contracts the legal rate of interest and discount shall be seven per cent. per annum, but special contracts for a higher rate shall be lawful."

I leave out the word "lower."

"All national and other banks of issue shall be restricted to the rate of seven per cent. per annum."

Striking out the words, "or lower." I move that as an amendment to the amendment.

The CHAIRMAN. That amendment is in order. The gentleman from Allegheny moves to amend the amendment by substituting the words:

"In the absence of special contracts the legal rate of interest and discount shall be seven per cent. per annum, but special contracts for a higher rate shall be lawful."

The question is on the amendment to the amendment.

Mr. W. H. SMITH. Mr. Chairman: If a man shall borrow one hundred dollars in currency or greenbacks at seven per cent., he will pay just about the same (within a fraction, more or less, according to the price of gold) that he would have paid for one hundred dollars in and before 1860, when the rate was but six per cent. for gold or convertible paper. For when six per cent. was the rate, one per cent. would pay the interest of one-sixth of a gold dollar, or 16⅔ cents. Now, if the gold dollar is worth 16⅔ more (one-sixth) in paper, and the borrower pays seven per cent. interest, he just pays the one per cent. (one-sixth) more than he did when

he hired money at six per cent.—in other words, the extra one-sixth of a paper dollar cost him the extra one per cent. interest.

But, then, the gold dollar up to 1860 would buy more than a dollar and a half in paper money will buy now, or fifty per cent. difference. I have seen some national statistics which, I think, make the difference between the gold and the paper dollar, then and now, seventy-five per cent. Common labor, the last and slowest commodity to rise in price, is one dollar and fifty cents per day now, against one dollar per day then. House rents in our city have risen, I think, an average of one hundred per cent., and many other things nearly as much.

The increase of circulation and the nature of the circulation we have, makes it necessary that we shall have an increase in the legal rate of interest. We have a currency which presents a strange anomaly in finance. It is a currency that cannot be redeemed in gold, and yet cannot be destroyed, discredited or thrown out of circulation, as the bank notes were when the banks issuing them could not redeem them in coin on demand. Our currency and greenbacks must always be as valuable as the national securities—that is, worth as much as gold; and as long as the interest on our bonds is promptly paid, our currency must and will float on an equality with the bonds, subject only to the fluctuations in the gold market which are the prolific source of so much rascality on the one hand, and of suffering on the other. The woes and distresses caused by these sudden and sometimes deliberately planned changes in the value of gold, are among the penalties that we have paid, are paying, and will have to pay for the luxury and misery of our late civil war, and its legacy of debt. There were, if I remember rightly, about two hundred and sixty millions of paper circulation in 1860, as shown in the national statistics of that year. Now our paper circulation of all sorts is about eight hundred millions or over three times as much, to say nothing of the increase of paper credits growing out of the government bonds, which are considerably used in business transactions. It is probable that there is a great deal more circulation required now than in 1860—if it were not so, it is likely that the premium for gold would be higher than it is. I do not think the rate of interest has increased much more than three per cent. That is, the mass of money that is actually loaned

by the banks would average *nine* per cent. now as against *six* per cent. in 1860. Perhaps the difference is greater than this, and the great increase in the *quantity*, and the deterioration in the *quality* of the money would seem to indicate a larger difference.

But I am prepared to hear some ingenious gentleman say that when there is so great an increase in the supply of what we call money, the legal rate of interest ought to be reduced instead of increased. If a man buys a house now for ten thousand dollars that twelve years ago he could have bought for six thousand dollars, he must certainly have more rent for it than he would have taken at that time. And nobody objects to this, but everybody pays the increased rates for everything as a matter of course and a matter of justice. But if, on the other hand, the possessor of the money does not choose to invest in a house, but prefers to keep his money and live on the interest of it instead of the rental of the house, he surely will be compelled to demand more for it than he would have done in 1860, because he cannot supply his own wants with the same amount of money that he could in 1860. It is worth more to the lender—and it is also worth more to him that wants to borrow it. Therefore the holder of money, as well as the holder of houses, asks and gets more for it.

Again, my ingenious friend will say that I am making a plea for the professional money-lender. Heaven forbid that I should do so foolish a thing. First, because the usurers of this day can take excellent care of themselves, and secondly because I would not so violate popular customs, as to offer any apology for any set of men whose dispraise is in everybody's mouth. No, Mr. Chairman, my appeal is intended for the *borrower* of money—the man of enterprise, and skill, and industry, who lacks pecuniary aid, and sometimes very little of it—just enough to enable him to get a moderate share of the profits of his own ingenuity or capacity. I plead, too, for the man who is compelled by losses or misfortunes to mortgage a portion of perhaps hardly earned real property for temporary relief. I bespeak favor, too, for the man who thinks he can advance his fortune by the judicious use of capital which he has not had time to acquire.

It is for these that I desire to see our usury laws, which are a delusion and a snare, removed from the statute books, or so modified that they will no longer be despised and evaded, but respected and

obeyed, as all laws ought to be. As the usury laws stand, they are constantly used by the extortioner to wring excessive interest from the borrower, who, it is pretended, they are intended to protect. And I hold, sir, that nothing so tends to demoralize a people, and to bring all laws into disrespect, as the existence of enactments that are perpetually disregarded, and are utterly opposed to the practices and opinions of the public. On behalf of the honest borrowers of the State, then, and against the interests and desires of the brokers and note shavers who fatten on the earnings or the hard necessities of that class, I beseech you to pass this section as reported. Let the man who chooses to legally lend his money for seven per cent. or more, (which he can do by sending it to New York or Ohio,) have the privilege of doing so at home without feeling that he is a law-breaker. There is enough capital here in Pennsylvania to supply the business needs of our citizens, if lenders were to make their bargains face to face with borrowers and to negotiate about the renting of their money, as men do about any goods they wish to sell, or any house or land they wish to hire, or any ship they may wish to charter. The advantages to be derived from the passage of this article I will endeavor briefly to enumerate:

1. It will make the *legal* rate for money what, as has been shown, is the *real* price paid, to wit, seven per cent., and a lender may choose for himself from customers who may offer the party to whom he would prefer to lend, according to the character and habits of the applicant, and the nature of the securities offered.

2. Middle men would be dispensed with; their fees are arbitrary and often enormous; they often fix much higher rates than they can get the money for, a round sum, and return the balance.

3. It will keep so much of our own capital as seeks only minimum rates, steady investments, and first-class security, at home. New York, New Jersey and Ohio now enjoy the advantage of untold millions of Pennsylvania capital, because their legal rates are higher than ours.

4. The men who will dare anything to make large percentages have the advantage of those who will not break the law; thus the borrower and the conscientious lender are kept apart. This will bring them together.

5. Money would fluctuate in price as corn or coffee does, and would bring its

value according to supply and demand, if that were less than seven or more than fifteen. He that would hold for a *rise* must take his chance. We see the rates of the bank of England changed frequently as the condition of trade or other circumstances may dictate. In Georgia the repeal of the usury law has made money more plenty and transactions easier.

6. Men who may feel badly about taking seven or nine may hold on to six. Nothing should be put into this Constitution or into the laws to interfere with or prevent this.

7. The free traffic in money will increase the supply and lessen the rates, except at certain seasons of the year, when there is always great demand for money.

8. The vast majority of business men—those who borrow as well as those who lend—are desirous for the change here proposed. They are law-abiding, and prefer open dealings. It is the unscrupulous lender that will object, because the law is now as he prefers it.

It does seem that all injunctions, whether sacred or secular, to prevent usurious practices, have produced exactly contrary effects to those intended. Like liquor laws or sumptuary laws generally, they are always disregarded. What they forbid, the people are sure to do. Why should such laws be passed or maintained?

Moses denounced usury on many occasions, and by express divine command. Here is one of the many orders he promulgated: "Thou shalt not give him (thy brother) upon usury, nor lend him thy victuals for increase." Yet in our day, and any time for a thousand years back, those who loan or have borrowed the most money, and as the impression is, got the highest rates for it, were of the same persuasion as Moses—often, indeed, named after him. They have long been denounced as the Ishmaelites of the exchange, whose hand was against every man's pocket, notwithstanding the explicit decree of the old Testament.

But while the usury laws for Christian as well as Israelite have always been stringent, both Christian and Israelite have shown equal disregard for them. Both have been shamefully disobedient, to use no stronger term. They have made statutes only to break them. They have pretended to think that usurious lending was a disgrace, and yet have always mocked the impoverished and plundered borrowers by taking to their hearts and

to popular favor the rapacious money-lender, who has grown rich in spite of the laws and without ever performing any useful labor whatever.

Let these mockeries and abuses be abolished in Pennsylvania by the adoption of this article. Let us take away the wicked occupation of these Shylocks, whose conscience is as elastic as India rubber, whose faces are flint, and whose hearts are granite. Let them not extort high rates to pay for the wear and tear of *conscience*.

"Conscience! It is their coin,

They live by parting with't,

And he thrives best who has the most to spare?"

Mr. MANTOR. I desire to ask the gentleman from Allegheny a question. Would his proposition give the same privileges to banks and banking institutions?

Mr. W. H. SMITH. Except as here stated. The national banks have the benefit of issuing money which they pay nothing for.

Mr. KNIGHT. Mr. Chairman: I hope I may be excused for trespassing on the time of the House for a few minutes. I would ask the gentleman from Allegheny if he will permit a division of the section. When the vote is taken, I should like to vote separately on this clause:

"In the absence of special contracts the legal rate of interest and discount shall be seven per cent. per annum, but special contracts for a higher rate shall be lawful."

The CHAIRMAN. That is the amendment of the gentleman from Allegheny.

Mr. KNIGHT. But I want to have a separate vote on the clause beginning "all national!"—

The CHAIRMAN. The gentleman from Allegheny did not move that as a part of his amendment.

Mr. KNIGHT. I understood that he did.

The CHAIRMAN. He did not.

Mr. W. H. SMITH. I did not move that.

Mr. KNIGHT. Before the vote is taken I would like to say a few words in defence of his proposition. If we had a uniform rate of interest all over the country, let it be four, five, six or seven per cent., there would be no necessity for our asking for the adoption of this section; but that unfortunately is not the case.

I have already stated the surrounding States have a legal rate of interest higher than the State of Pennsylvania, and this greatly discriminates against our own

citizens. Now that is pretended to be equalized by a discount on our securities. I fear that the people of this Commonwealth, and particularly of the commercial cities, have not given sufficient consideration to the discount question. The paying of a high rate of interest is one thing, and taking a large discount off a bill, note, mortgage or other security, is an entirely different one. Every dollar of discount that we take off in negotiating our loans to persons living outside of our own State is just that much capital lost. Our securities of railroads and other institutions have been negotiated in London, securities of this State probably to an amount between \$50,000,000 and \$100,000,000. London seems to be the great centre where people go to borrow money, and London, of course, has the great capital because she is constantly having her coffers filled with the property of our citizens. We all know that money is the ruling spirit in all business and commercial transactions, and the sinews of war as well, and without money enterprise cannot thrive.

Now, sir, when you sell your bonds at ten per cent. discount, as I showed you the other day, you are paying at the rate of six and six-tenths per cent. interest, and you are actually paying a bonus of ten per cent. to the person who loans it. Hence, on a loan of \$100,000,000, the people of a foreign country will receive \$10,000,000 or \$15,000,000, as the case may be, of our property, for which we get no equivalent whatever. To pay interest at seven per cent. seems like a high rate; but we must recollect that if we sell securities a little below ninety, we are not only paying seven per cent. interest, but we are making them a present of the discount, too.

This is an indirect tax upon our people. If it were a direct tax, and the people of London called upon the citizens of the Commonwealth of Pennsylvania to contribute \$10,000,000 for any charitable purpose, or to build up a monument in the city of London, the whole community would rise up and say, "no, not a dollar;" but, sir, you are building up monuments there indirectly without knowing it, and you will continue to build them up as long as you continue to sell your loans at a discount, and you will be obliged so to sell them at a discount, until you raise the rate of legal interest. There is no help for it. People will not come here to invest their money at six per cent. when

they can go to the right and the left of us and invest it at seven or eight per cent., and have a legal, valid security.

The great question is, what tends most to bring capital into the State? I contend that to do away with the usury laws, and to increase the legal rate of interest, will tend to bring capital here. Restricting the rate of interest below that of your neighbors, and retaining the usury laws as they are, must divert capital away from us.

It may be argued that this is not a proper subject to be provided for in the Constitution, the organic law; but it is in other Constitutions; and if we cannot get it without a constitutional provision, how is it going to be obtained?

Mr. CAREY. Will my friend permit me to ask him what other Constitution this is in?

Mr. KNIGHT. It is in the Constitutions of Illinois, Maryland and Virginia.

Mr. CAREY. Of Illinois?

Mr. KNIGHT. Yes, sir. The recent Constitution of Illinois says that the Legislature shall not legislate upon the rate of interest. It prohibits them from doing so. We ask that the subject shall be provided for here, and then there will be no necessity for the Legislature to act upon it. Illinois will not allow any change of the rate by the Legislature; so that it can only be changed by constitutional provision.

Mr. CAREY. We had exactly that proposition before us in the legislative article, which expressly provided that the Legislature should not legislate upon the question of interest, and that was opposed expressly by those gentlemen who were anxious to have the rate of interest raised. Now, if that is the effect in Illinois, how is it that gentlemen here who are anxious to have the rate of interest raised, were opposed to having that express provision placed in our Constitution?

Mr. MACCONNELL. I should like to ask the gentleman from Philadelphia (Mr. Knight) a question, with his permission.

Mr. KNIGHT. Certainly.

Mr. MACCONNELL. This subject of increasing the rate of interest by law has been before the Legislature every winter without exception, I believe, for the last thirty years, and the Legislature has uniformly refused to increase it. Does not the fact that the people have sustained the Legislature for those thirty years in

that action show that the people do not want any increase of the rate?

Mr. KNIGHT. The gentleman is as fully able to determine that matter as I am.

In answer to my colleague (Mr. Carey) I will say that the law of Illinois is that six per cent. shall be allowed where no rate is specified for money loaned, but parties may agree upon any rate not exceeding ten per cent. Special contracts may be made there up to ten per cent. and the Constitution says that the Legislature shall have no power whatever to change the rate. Therefore it is a constitutional enactment.

One word further, and I have done. I repeat again, that it is impossible for the national government to fix a uniform rate of interest throughout the country, because we all know that the new Territories and States require money and can afford to pay a higher rate; and they can only get it by giving security and paying a higher rate. That being the case, I do contend that it is for the interest of the people of Pennsylvania that we should be put in some way on an equality with our near neighbors, or otherwise we shall constantly be crippled in our financial concerns.

Mr. CAREY. Mr. Chairman: We are trying to make a Constitution and we have some hope that the people may ratify it. All the legislative rings, the whiskey rings, and almost all the other rings, are united to prevent the adoption of any Constitution by which reform shall be effected. Now, is it desirable that in a case where the people have been pronouncing through the Legislature for the last twenty years that they would not act, we should put in the Constitution a provision that they shall act? Will not that unite an amount of opposition to the Constitution we shall eventually frame, that will effectually kill it?

Look around you, and what is the state of things here? We are told that men of business all want this measure. The gentlemen of the Board of Trade who are opposed to having any more money, and who passed resolutions to that effect, are in favor of this proposition. The gentlemen who do business on a large scale are, very many of them, in favor of it. I received a note on Saturday from a friend who is thoroughly acquainted with the feeling of the middle class of men of business here who are not in the Board of Trade, who are not of the aristocracy of trade—and there is not a man in the

city understands them better—in which he says:

"It is not the wish of business men to make capital more costly than it is, but only of those who have managed to scrape money together and wish to live upon it without attending to business, at the cost of the men who risk their all in enterprise."

That I believe to be the fact.

Mr. J. PRICE WETHERILL. I should like to ask the gentleman to give us the name of the writer.

Mr. CAREY. It is not for me to do so. I will answer for what I have said. I will be responsible for it.

Now, sir, we have in this city something like one hundred and twenty-five thousand or one hundred and thirty thousand houses. Two-thirds of those houses are owned and occupied by men who get their living by the sweat of their brow. A very large portion of those houses are subject to mortgage. If you adopt this section, you will enlist all those men against your Constitution; and anxious as I am that what we do shall be adopted by the people, if this section shall be inserted, those people will most certainly be advised as to the effect of the provision. I hope and trust it may not be adopted. The regulation of this subject is the proper business of the Legislature. It has been before them in every shape and form for years. They know that the people will not sanction any such proposition as this. Why, sir, we had a statement here only on Friday last by the gentleman from Dauphin (Mr. MacVeagh) that the members of the New York Senate, who had voted, not for what is proposed here, but simply for a change of the penalties, were obliged to get up and recall their votes and say that they found that their people were decidedly opposed to it. Sir, if you adopt this provision and call upon the people to vote for it, Philadelphia will give you a majority of forty thousand against the Constitution, and the Constitution will be beaten by one hundred and fifty thousand in the State. The people do not want any such measure as this. What better weapon could be placed in the hands of all those who are now working against the adoption of the Constitution than the insertion in it of such a provision as this? Will they not say, and ought they not to say, this Constitution has been made for the rich at the cost of the poor; it is made for the man who has money to loan at the



cost of the man who desires to borrow. Sir, this section has no business on earth in the Constitution, and therefore I do hope and trust it will be voted down.

Mr. J. PRICE WETHERILL. One word in reply to my colleague from Philadelphia (Mr. Carey.) He says that we must look to the Legislature for help, and that from the Legislature alone can come the desired help. I was chairman of a standing committee appointed by the Board of Trade some six or seven years ago that every winter made application to the Legislature for this relief, that the rate of interest might be changed to seven per cent., without any avail whatever; but individuals went there, parties who desired to have some banking facilities in a private way, parties who desired the charter for the People's Bank and other banks which my colleague from Philadelphia (Mr. Knight) named, asking the special privilege to discount at whatever rate they saw fit, and this class legislation was given to them, and the merchants and manufacturers of the city of Philadelphia and the State were refused it. With that fact staring us in the face, can we expect any help from the Legislature? Is not that argument merely used as a means to induce us to pass over the subject in the Constitution, so that we may hereafter always be subjected to six per cent. while the surrounding States are charging seven?

Mr. HARRY WHITE. I did not design to participate in this discussion, nor shall I do so now at any length. I know what honest motives animate the honorable delegate from the city (Mr. Knight) who originally introduced this proposition. I know and appreciate the honorable motives that animated my friend from the city who has just taken his seat (Mr. J. Price Wetherill) when he advocates this section. I had hoped indeed that this matter was ended the other day, that the question was put at rest by a vote of a majority of the committee. The proposition in the shape in which it now comes before us is the same proposition that was voted down on last Friday, only clothed in a slightly different garb.

Now, Mr. Chairman, I am entirely opposed to placing this provision in the Constitution. As a representative of the people at large, more particularly of the people of the section of the State in which I live, and claiming to know their views, I know I represent them faithfully when I

raise my voice against putting this section in the Constitution.

It has been said that we want our reforms practical; we want whatever we do to receive the assent of a majority of the people. I but echo what other gentlemen have said when I declare that if you place this feature in our Constitution, you will rally thousands of votes against it.

Again, this is not one of the great reforms to secure which the people of this Commonwealth voted in favor of this Convention. No delegate was interrogated, or conversed with, as to his views on the question of interest. Therefore, I think, with all due deference to my friends who are in favor of this section, we are wasting time unnecessarily in talking about it.

Another objection which has been stated, and very correctly, is, that this is a proper subject for the consideration of the Legislature. The answer by the gentlemen in favor of the section is, "the Legislature, from year to year, has refused to accede to our requests and so give practical relief." The gentlemen who made that utterance paid, unconsciously to themselves, a compliment to the integrity of the Legislature which I wish could always be paid.

Sir, on this question my interests are all with the banks. If I were sitting here as a bank director, legislating for the interests of the banks, I should be in favor of this section. If any gentleman here goes to the board and asks the directors and officers of the bank in which he is interested how the bank is progressing, he will find every one of them in favor of a section of this kind. As individuals, looking to our individual interests, we should all be in favor of it. Why? Because it adds to our coffers, it adds to our profits, and thereby depreciates the interests of the people.

Let me state another thing in confirmation of this fact. I can cast my eyes around this Chamber and see some gentlemen, as honest men as live in this Commonwealth, who, if they are interrogated on this subject, while they are bank officers, will tell you that in some instances they have been asked to contribute money to raise a fund to buy a bill through the Legislature changing the rate of interest. I know whereof I speak. I do not know that corruption has been practiced. I know that delegates on this floor have been interrogated as to the propriety of contributing money to raise a fund to buy the passage of a bill through the Legisla-

ture to raise the rate of interest. In whose interest is that? In the interest of the people? In the interest of the general public? No, sir; in the interest of the banks, which is a valuable interest, indeed, in the Commonwealth, who claim that the people's representatives will not legislate for them honestly, and therefore they are justified in corrupting them and getting it through dishonestly, if you please.

For two or three years, Mr. Chairman, I was in favor of a bill to increase the rate of interest. Subsequent reflection and familiarity with such able and clear views as we have heard expressed on this floor from the lips of the eminent delegate from Philadelphia (Mr. Carey) have changed my mind on the subject, and I am satisfied that instead of advancing and developing the material interests of Pennsylvania by increasing our rate of interest, we shall, on the contrary, be retarding it. The honorable delegate, (Mr. Knight,) who is a plain, practical business man, and knows the interests of Philadelphia, and desires to represent them faithfully, must see, if he reflects for a moment, that the practical effect of increasing the rate of interest in Pennsylvania from six to seven per cent. will be to cripple business men like himself and others in this Commonwealth. The delegate from Philadelphia (Mr. Knight) says, and says truthfully of course, that he does not own any bank stock. I do not know anything about the business interests of the delegate, but I venture to say that the firm of which he is a member, like other business men in this Commonwealth, hold large securities; doubtless from time to time they require accommodation from the banks, the national banks, the large moneyed institutions of this community, where there is rivalry, and by reason of that rivalry they can get money at six per cent. interest. Gentlemen holding such securities do not desire to throw them on the market; they want to raise \$5,000, \$10,000 or \$50,000. The gentleman throws his note in bank and he accompanies it with his collateral securities. What is the rate of interest that he pays? Six per cent. Why does he pay six per cent? Because the bank cannot charge more than six per cent. Raise the legal rate of interest from six to seven per cent., and what is the practical effect? He pays seven per cent. instead of six per cent. Does that benefit the business man?

Mr. LILLY. I should like to ask the gentleman a question. I should like to ask him if he never heard of banks in New York charging interest for \$20,000 when they loaned but \$10,000?

Mr. HARRY WHITE. That may be so, but in answer to my friend from Carbon, let me suggest that you go upon Chestnut street, you go upon Third street, you go to the national banks of this city, and what is the rate of interest they charge to business men? They do not want to drag in third parties. They understand that they cannot be put off. They deal directly with business men of high character who are large depositors and require to use their balances. They negotiate with them; and what do they charge? They never charge more than six per cent. Why? Because the banks want these men's business and their influence and their aid; and if one bank does not grant the needed accommodation, it is very easy to go to a neighboring bank which will be glad to give the accommodation in the hope of getting the benefit of the large balance.

Mr. KNIGHT. May I ask the gentleman a question.

Mr. HARRY WHITE. Certainly.

Mr. KNIGHT. I ask the gentleman whether he is not in favor of putting the people generally on an equality?

Mr. HARRY WHITE. No doubt of it.

Mr. KNIGHT. Then I hold in my hand a charter signed on the 30th April, 1873, passed by the recent Legislature, which says: "The corporation hereby created shall have and possess the power to receive money on deposit subject to checks, and receive upon deposit for safe keeping jewelry, plate, stocks, bonds, securities, and other valuable property, and papers of every kind, upon terms to be prescribed by the by-laws of said company."

By the "by-laws" of the parties themselves, made by themselves.

"And shall also have power to invest in mortgage and other securities the money received by it on deposit as fully as if the same were surplus funds or the earnings of said company, and shall also have power to build upon or alter such real estate as may be necessary to carry on the business of the company, and to connect the same with any railroad convenient thereto by one or more connections therewith."

If these charters are going to be passed for the benefit of a favored few, giving

them these special privileges, doing away entirely with the usury laws as to them, and allowing them to charge any rate that they may see proper, and not only that, but to buy and sell mortgages and real estate and build railroads in any place, why not throw the mere right to agree on the rate of interest open to the public and say, "you may all enjoy it on an equality?"

Mr. HARRY WHITE. Mr. Chairman: It is just such things as the delegate from Philadelphia (Mr. Knight) has called attention to that we want to prevent for the future. Of course, I am opposed to the special privileges of which he has spoken. Too many of them have been granted already. Adopt the article which has been reported by the Committee on Legislation, and passed through the committee of the whole heretofore, and you make it impossible for the future for any such special charters to be passed. And let me say, in compliment to the Legislature for the last three years, and in compliment to the chairman of the Banking Committee of the Senate at least—who is an enterprising citizen of the western part of this State—that during that time never once has there been reported to the Senate a bank bill authorizing anything to be done in the way of loaning money except upon the laws of the Commonwealth. Doubtless from time to time loose charters have been passed, but those charters have generally been snaked through and have not been subjected to the close revisionary power of the Committee on Banks or those committees whose duty it was to examine them. We have heard of the magic by which certain bills are passed in certain interests from time to time in the Legislature, and we want to make those things impossible for the future.

Mr. KNIGHT. This charter was passed in 1873. It is not an old charter.

Mr. HARRY WHITE. What is the charter? What is it about?

Mr. KNIGHT. About such things as I have read.

Mr. HARRY WHITE. What is the name of the company?

Mr. KNIGHT. The Mercantile warehousing company, and the charter was signed April 30, 1873.

Mr. HARRY WHITE. With all deference to my friend from Philadelphia, that bill with those peculiar features, I venture to say, was snaked through. There is a bill for a warehousing company

with banking privileges, that never ought to have been passed; but it is impossible in the eighteen hundred bills which are passed during a session of the Legislature for every member of that body to read all those bills through in detail. How easy it is for a bill incorporating what is called a mercantile warehousing company to have banking privileges in it, and thus elude the vigilance and scrutinizing care of members of the Legislature, all of whom, doubtless, want to do their duty, and are surprised to find an obnoxious statute of that kind on the book. No, Mr. Chairman, I am opposed to those features; I am opposed to this special class legislation; and I trust that it will be one of the results of our work that every Pennsylvanian can boast that wherever capitalists are willing to associate together for enterprise, for railroads, for mining, for banking purposes, they will have the opportunity to do so under general laws. Then all will stand upon an equal footing.

But there is another question about this. It is said that much good will be done to the people by removing all restrictions as to dealing in money. Why, in my section of Pennsylvania to-day money is scarce, commodities are depreciated, business is dull just because of the scarcity of the circulating medium. Why is this? Here and there you will find a capitalist who is seeking for investment. He will go into the local bank and deposit his money on call, taking a certificate at five or six per cent. as the rate of interest. Of course the bank that receives such a deposit in the locality must make more than six per cent. out of it in order to justify it in paying five or six per cent. to its depositor. What will be the effect if you increase the rate of interest from six to seven per cent. on these banks which are thus made the receptacle of the little money which is found scattered throughout the Commonwealth? Their call balances in the city of Philadelphia will be largely increased. They will be able thus to gobble up money by increasing their present rate of interest from four to five per cent.—and no substantial bank will pay more than that—and they will accumulate their balances in the city of Philadelphia where they can get seven per cent. by reason of the activity of money; and thus you will concentrate capital, you will draw capital from the avenues of trade, from the lumber regions, from the iron regions, from the manufacturing re-

gions, from the agricultural regions, and concentrate it here in the business centre, and impoverish the central parts of our Commonwealth.

These are some cursory considerations which I merely throw out. On Saturday I was out of the United States; I was over in the great State of New Jersey, [laughter,] of which we have heard so much. I had a business transaction in the city of Elizabeth, in New Jersey. I happened to inquire whether there was an abundance of money there. I happened to have some securities over there, and I inquired naturally as to the state of things. I said: "You have increased the rate of interest here?" I was told, "Yes, from six to seven per cent." "They have the same rate in New York, seven per cent.?" A very intelligent gentleman, a lawyer and a business man, said: "Yes, our people were induced to increase the rate of interest from six to seven per cent. because they had seven per cent. over in New York." I asked, "Do you find any difference in your money matters?" "Not at all." "Do the banks charge a uniform rate of seven per cent.?" Well, he laughed and looked at me and said, "It is not thought proper by business men to say all they know about it." And so it will be here. Mr. Chairman, in a word —

Mr. CORBETT. Mr. Chairman: I ask whether the ten minute rule is abrogated?

Mr. HARRY WHITE. I am through, Mr. Chairman. I am opposed to the amendment, and hope it will be voted down.

Mr. W. H. SMITH. Mr. Chairman: I was asked, why not take this matter to the Legislature. Our people have gone to the Legislature and that body has refused to make the law we now ask here. The people continually violate the usury law and they continually complain of its hampering them in their operations, and I suppose that this law, if it is not to be perpetually despised, ought to be repealed, for it certainly has a bad effect standing as it does. There has not, however, been any difficulty in getting special privileges from the Legislature in this respect. I do know of at least one, and I think I know of three banks in the city of Pittsburg, that have the privilege of charging ten per cent. by special act of the Legislature; in one case by a special additional charter. All we ask is that you will give all people who have money to lend the same rights to put their money in the market where

it can be bought at the market price. I know that such privileges have been granted to certain banks, and certain other banks cannot get them. Why not treat all alike?

The gentleman from Indiana (Mr. Harry White) says that a fund may be raised to buy the Legislature to pass such a law. These men do not spend their money in that way. If any bank wants to get it and goes to the Legislature, he knows very well it could have bought it through and got the right to charge ten per cent. That suggestion will not hold water at all. I submit, sir, that it is not proper, it is not sound, to allow the exclusive privilege to certain banks to get ten per cent. and to make it criminal in a citizen to do the same thing. Such legislation is a blot on the statute book. I do not speak for the usurer, I speak for those who want to borrow money, because I do know that there is plenty of money borrowed in the city of Pittsburg, hundreds of thousands of dollars by men who have to hire brokers and go-betweens, and it costs the man who borrows it one and one-half or two per cent. more for the time he gets it, than he would have to pay but for these contrivances. This is what we contend against and condemn.

Mr. NILES. Mr. Chairman: This question, in substance, has been before the committee for four days; this very proposition has twice been voted down. Now I desire to inquire for information whether it will be in order to take the vote upon it to-day? It seems as though the committee understood this question. It has come up in various forms; and if we are ever to finish anything, it seems to me it is about time we have a vote on this. ["Question." "Question."]

Mr. J. PRICE WETHERILL. Just a moment, sir. ["Question." "Question."] I ask to be heard as a question of privilege. The gentleman from Indiana made a statement which, I think, deserves at my hands some words of reply.

I stated that I had been chairman of a committee of the Philadelphia Board of Trade that had made several visits to Harrisburg in order that we might secure a law to have the rate of interest changed from six to seven per cent. The gentleman, in reply, hinted that he had heard about the halls at Harrisburg that money had been used to secure the change of the rate of interest from six to seven per cent. Now I desire to say to him, if he will pardon me, that when that committee went

to Harrisburg they fully understood that individuals, for private greed and private gain, did, by means of which that committee knew nothing, obtain special legislation, and when they came home they came to the conclusion that perhaps the reason for their own want of success was that they declined, as men of honor, to use that corrupt means by which, perhaps, this special class legislation was obtained.

Mr. HARRY WHITE. My friend from Philadelphia will believe me, I trust, when I tell him that in the remark I made I had no reference whatever to the committee of which he said he was a member. The allusion he made had escaped my mind. I had reference entirely to a different matter. What I said then I say now, that a bank officer in this Commonwealth—I will not say now whether he is a member of this body or not, because it is not necessary to do so—told me that he was asked to contribute to a fund to purchase a bill through, changing the rate of interest, and he indignantly declined.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. W. H. Smith) to the amendment of the gentleman from Mifflin (Mr. A. Reed.)

The amendment to the amendment was rejected, there being, on a division: Ayes, fourteen; less than a majority of a quorum.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Mifflin (Mr. A. Reed.)

Mr. BROOMALL. Now, I desire to say a few words upon that amendment. It would have been well enough twenty years ago, for gentlemen to have objected to the Legislature allowing any rate of interest that parties might bargain for; it would have been well enough for members of the Legislature then to look frightened at the enormity of allowing men to make their own bargains about money as they do about everything else; but now, when the great corporations of the State have all managed to get the privilege of borrowing at any rate they choose, and have thereby swallowed up the capital of the State at rates ranging from seven to twelve per cent.; now, when in any tightness of the money market, a representative of one of these great corporations may go into the market openly, and legally bid ten per cent., while I, as a simple borrower, am prohibited by law from doing the same thing; it is quite time for us to

inquire whether or not all the rights in the world are to be absorbed in corporations, and none to be allowed to simple individuals.

Sir, the gentleman from Indiana (Mr. Harry White) talks well as a bank director; he talks well as a man interested in banks.

I happen to be of exactly the opposite character. My interests are all with the borrowers, and I demand the right for them to be allowed to borrow on the same terms with the gentleman's corporations. I demand the right to bargain upon equal footing with those soulless corporations for whose bills doubtless the gentleman has voted many a time. He knows, and every other gentleman here knows, that there is not a single railroad in the State, and not a single iron corporation, but has the right to sell its bonds at any rate that it pleases, and to borrow money at any rate it pleases either directly or indirectly. Yet when John Smith, or any other simple individual, asks to be put upon the same footing, it is said that all the interests of the Commonwealth will be impaired by allowing him the opportunity to do so.

The gentleman from Indiana talks wisely as a bank director. I doubt not that his interests are with the banks largely—banks that he says borrow at five and six per cent. and loan at about the same interest. Ah! There are other gentlemen here who know the operations of banks as well as the gentleman from Indiana. I know that I can get five or six per cent. for my deposits with the pet State banks such as those in which the gentleman from Indiana has an interest, and others. I know that I can do it; I know that I can borrow from the same banks or any other bank for possibly six per cent.; but does not the gentleman know that when I borrow at six per cent. of a bank, it is upon the tacit or express consideration that I leave one half of my loan on deposit? I want to know whether that is anything more or less than simply a loan to me at twelve per cent. interest per annum? Does not the gentleman know that the banks loan only to its depositors at these rates and that every one of them is interested in precisely this state of things?

Mr. DARLINGTON. May I ask my colleague a question?

Mr. BROOMALL. Yes, sir.

Mr. DARLINGTON. Do I understand him to say that any banks in our district play that game of requiring as much

money to be left on deposit as they loan to borrowers?

Mr. BROOMALL. I venture to say that there is not a bank in the State at this time but what discounts only for a depositor, and then when a loan is made there is either tacitly or expressly an understanding that a considerable deposit will have to be kept in the bank by the borrower.

Mr. DARLINGTON. I cannot say how it is in Delaware county, but it is not so in Chester.

Mr. BROOMALL. I know that there are a great many gentlemen here who are interested in banks; I am not. I can stand here as the spokesman of the men who want to borrow, and I want to have this state of things changed. The bank of the gentleman from Indiana can absorb the capital of his neighborhood at five or six per cent. simply because the depositors cannot loan to their neighbors at a higher rate than five or six per cent., but the bank can turn around and indirectly loan the same money at twelve or fifteen per cent. by loaning it only to those who keep large deposits at the bank—by, in fact, loaning half the money at full interest. Hence it is that the banks are interested—I mean the banks that receive money on deposit—upon the same side of this question precisely with the large moneyed corporations that have managed to get the power of borrowing that excludes the poor borrower from the market altogether.

It is quite time that this thing was inquired into. I know a great deal may be said about the howl of indignation that will be raised if we should do any such thing as we are talking about doing in the Constitution of the State, apparently in the interest of borrowers, and possibly some borrowers may be humbugged into the opinion that their interest lies in that way. But borrowers are getting too shrewd for that. They see that the railroad and other corporations can go into the open market and borrow money legally at any rate of interest they choose to pay, whereas the people if they desire to borrow at the same rates are debarred by a legal provision on the subject of interest and have to do it by some contrivance in a circuitous manner; and they are beginning to be too shrewd not to see that the men who apparently represent their interests are really representing the interests of their enemies.

Now, whether or not this matter should be left to the Legislature is a question

that is, of course, worthy of consideration. But the Legislature at least should take from corporations the privilege they have already received or else allow the same privilege to individual borrowers; and the Constitution should compel the Legislature to do so.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Mifflin (Mr. Andrew Reed.)

Mr. BEEBE. I vote "no," and give as a reason that while I favor the proposition I do not believe it should be incorporated in the Constitution, but should be left to the Legislature to express from time to time the will of the people, for I do not believe the people would now sanction it.

The amendment was rejected, the ayes being twenty-six, less than a majority of a quorum.

The CHAIRMAN. The article reported has been gone through with, and the committee of the whole will rise.

The PRESIDENT *pro tem.* resumed the chair and the Chairman (Mr. Cuyler) reported that the committee of the whole had had under consideration the article (No. 11) reported by the Committee on Agriculture, Mining, Manufactures and Commerce, and had reported the same with a negative recommendation as to each section of the article.

The PRESIDENT *pro tem.* The Chairman of the committee of the whole reports article No. 11 negatived. The article falls.

#### ORDER OF BUSINESS.

Mr. D. N. WHITE. Mr. President: I move that we proceed in committee of the whole to consider the article reported by the Committee on the Declaration of Rights.

Mr. HARRY WHITE. If my friend from Allegheny will allow me, I beg to suggest that the question is for the Convention to agree to the report of the committee of the whole just made.

Mr. NEWLIN. That has been done. The article falls.

Mr. HARRY WHITE. Has the Chair decided that the article falls?

The PRESIDENT *pro tem.* Yes, sir.

Mr. HARRY WHITE. All right.

The PRESIDENT *pro tem.* The delegate from Allegheny moves to go into committee of the whole on the article on the Bill of Rights. The question is upon that motion.

The motion was not agreed to, the ayes being twenty-six, less than a majority of a quorum.

PRIVATE CORPORATIONS.

Mr. CAMPBELL. I move that the Convention proceed in committee of the whole to consider the report of the Committee on Private Corporations.

Mr. DODD. The chairman of that committee (Mr. Woodward) is not present.

Mr. CAMPBELL. We desire to proceed without him.

On the question of agreeing to the motion a division was called for, which resulted thirty-nine in the affirmative, and twenty-one in the negative. So the motion was agreed to, and the Convention resolved itself into committee of the whole upon the article on private corporations, (No. 21,) Mr. Stanton in the chair.

Mr. DODD. Mr. Chairman: I desire to state that on looking over the names of the members of the Committee on Private Corporation, I find that certainly one-half of them are absent, and among them those who were most active in this committee. Not only is the chairman of the committee, Judge Woodward, absent, but the gentleman next him on the committee, and who was deputed to act as chairman in his absence, Judge Turrell, is also away, and Mr. Simpson, the secretary of the committee, has just obtained leave of absence for a few days, and Mr. Baer and Mr. Heverin are not here. Upon consultation with the other members of the committee, we have concluded that it is expedient that the chairman should be present when the article is discussed. There has not been any consultation among ourselves in relation to the manner in which this report shall be conducted in its passage through the committee of the whole, and therefore, after consultation with the members of the Committee on Private Corporations who are present, I move that the committee of the whole do now rise, report progress, and ask leave to sit again.

Mr. LILLY. I desire to say, in answer to the gentleman from Venango, that the records of this House will not show any member of this Committee on Private Corporations to be absent on leave.

Mr. DODD. The chairman, Judge Woodward, is away on leave.

Mr. LILLY. His leave has expired.

Mr. BAKER. My colleague (Mr. Simpson) obtained leave of absence only this morning.

Mr. WORRELL. Mr. Chairman: I rise to a question of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. WORRELL. My point of order is that a motion that the committee of the whole rise is not debatable.

The CHAIRMAN. The point of order is well taken. The question is upon the motion that the committee of the whole do now rise, report progress, and ask leave to sit again.

The motion was not agreed to.

The CHAIRMAN. The question is upon the first section of the article reported by the Committee on Private Corporations, which will be read.

The CLERK read as follows:

SECTION 1. The term "corporations" as used in this article shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

The CHAIRMAN. The question is on the adoption of the first section.

The section was not agreed to; there being on a division, ayes twenty-four, not a majority of a quorum.

Mr. J. W. F. WHITE. Would it be in order now to make any remark in reference to that first section?

The CHAIRMAN. It is not before the committee. The second section will be read.

The CLERK read as follows:

SECTION 2. No exclusive rights, privileges or immunities shall ever be granted by the Legislature to any person, company or corporation.

Mr. J. W. F. WHITE. I regret, as a member of the Committee on Corporations, that this report has been brought so hurriedly before the committee of the whole. The chairman of that committee did say to the Convention that he did not wish the report to be delayed in consequence of his absence; but at the same time it was confidently expected that this report would not be called up until his return. There are several other minor reports that might be taken up. Judge Woodward went away the first of last week and expected to be back the first of this week.

In addition, I think that the other members of that committee had very little expectation of this report being called up to-day or to-morrow, and no doubt the other members of the committee will be here by to-morrow.

If it is in order to make a remark while this section is pending, relating to the previous one, I will just say this: The object of the committee in reporting the first section as it stands here is to define the word "corporations," and this section is in almost the precise words of a section in the Constitution of New York. The definition of the word "corporation" perhaps is necessary in order to prevent an evasion of the constitutional restrictions in reference to corporations by designating them by some other name or calling them by something else than a corporation. If we wish by the restrictions we throw around the Legislature in the creation of corporations, to limit them certainly and definitely, it is evidently proper in the Constitution to define the word 'corporations' so that there can be no evasion. That section stood that "the term 'corporations' as used in this article shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships."

That meant all joint stock companies and all associations possessing any other powers than those of partners. It defined them and made them corporations and brought them within the terms, restrictions and requirements of the Constitution in reference to corporations. I apprehend if the committee will look at that section again, perhaps they will find it proper to reconsider it and either pass the section or modify it to suit the views of gentlemen.

I have only one remark to make in reference to the section now before the committee. This section prohibits all exclusive rights, privileges or immunities being granted by the Legislature. The object of it is that whatever corporate rights may be conferred by the Legislature may be conferred upon all who wish to enjoy them, under such regulations as may be prescribed by the Legislature for corporations; that no corporation in the State shall be clothed with any exclusive right, power or privilege whatever. Perhaps that has been and is one of the greatest evils in reference to our corporations—exclusive grants of powers and privileges.

MR. LILLY. I would like to ask the gentleman a question. Does not a railroad corporation get an exclusive right over the ground where its tracks run, to the exclusion of all others?

MR. J. W. F. WHITE. I do not think that this section will authorize one rail-

road company to locate its track upon ground previously appropriated by another railroad. That is not embraced in this section. It is a right, a privilege or immunity which is not affected; but the right to construct a railroad between two points, or any other right of that kind, it is provided, shall not be exclusive. It will extend to bridges, of course. No corporation shall have the exclusive right to erect a bridge over a certain stream; but of course if one bridge be erected no other company could be incorporated to erect a bridge right over that or right through it; that would be an absurdity. So, too, in reference to locating a second railroad on the precise ground of an existing railroad; that is not involved in this section.

MR. CORBETT. I would like to ask the gentleman from Allegheny a question. Is not the case covered by line forty-seven of section ten of the report adopted by the committee of the whole of the Committee on Legislation? That is applied as a restriction on special legislation, and forbids "granting to any corporation, association or individual, any special or exclusive privilege or immunity."

MR. NILES. The delegate from Clarion read from section ten:

"The Legislature shall not pass any local or special law granting to any corporation, association or individual any special or exclusive privilege or immunity."

That is very nearly in the language of the section now before the committee, and in better shape, it seems to me, and therefore this ought to be ruled out.

MR. HAY. I think a careful reading of the section just read will show that that only prohibits the Legislature from passing a local or special law, and does not prevent their passing a general law by which companies may be incorporated with exclusive privileges.

MR. CUYLER. I suppose I understand what the Committee on Corporations intended to convey by the language of this section, but I think the language singularly unfortunate in conveying the idea that they intended to express. No exclusive right shall be granted "to any person, company or corporation." Every right a corporation or a person has is an exclusive right, necessarily so. If a corporation has a right to build a railroad, it certainly owns its right of way exclusively. Nobody else can go and lay another railroad on the same site. If an individual obtains a change of name from the Legislature from Smith to Brown it does not



mean necessarily that the name of everybody in the Commonwealth shall be changed to Brown. Or if Mrs. Jones wants to be divorced from her husband, it does not mean to say that every wife in the Commonwealth must be divorced to do it. And yet that is the language of the section. It does not convey the meaning the framers of the section intended to convey. As it stands here, it seems to me simply absurd.

The CHAIRMAN. The question is on the section.

The section was rejected.

Mr. CORBETT. I move to reconsider the vote on section one.

Mr. CUYLER. Do I understand that the reconsideration is moved and seconded by one who voted in the affirmative?

Mr. HAY. I second the motion to reconsider, and I think the members of the Committee on Corporations ought to have an opportunity of explaining the section.

The CHAIRMAN. The question is on the motion to reconsider the vote by which the first section was rejected.

The motion was agreed to; there being on a division, ayes thirty-five, noes seventeen.

The CHAIRMAN. The first section is reconsidered, and is now before the committee. The question is on agreeing to it.

The section was not agreed to.

The CHAIRMAN. The third section will be read.

The CLERK read as follows:

SECTION 3. All railroads, canals, highways, and other modes of public travel, transportation, or communication, by telegraph or otherwise, shall be open and equally free upon the same terms and conditions to all the citizens of the State. No preference, favor, or special privileges shall be allowed to any person, company or corporation, or discriminations made in any case or in any manner to the injury of citizens of the State.

Mr. CUYLER. Mr. Chairman: That is the law of the State to-day. It is the common law as applied to all these corporations. Why write it into the Constitution? Our books are full of decisions affirming that to be the law. There is not a State in the Union that has not decisions to that effect. The English railway traffic act, and telegraph act, embody it in precisely the same way. Why write in the Constitution what is part of the common law of the land?

The CHAIRMAN. The question is on the section.

The section was rejected.

The CHAIRMAN. The fourth section will be read.

The CLERK read as follows:

SECTION 4. The Legislature shall pass no special laws giving corporate power; but all corporations shall be formed, their charters be changed or amended, and their powers and privileges be defined and regulated, by general laws which shall be uniform as to the class to which they relate. And the grant of all such charters, powers, and privileges shall be subject to the right of the Legislature to revoke, annul, or change the same, whenever they shall become injurious to the public, in such manner that no injustice shall be done to the corporators.

Mr. T. H. B. PATTERSON. I call the attention of the committee to the forty-fifth and forty-sixth lines of section ten of the article on legislation, which has already passed the committee of the whole, which read in this way:

"The Legislature shall not pass any local or special law creating corporations or amending, renewing or extending the charters thereof."

I would ask the committee if that does not cover this section. That has already passed in committee of the whole in the article on legislation.

The CHAIRMAN. The question is on the section.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 5. All existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place at the time of the adoption of this Constitution, shall thereafter have no validity.

Mr. CAMPBELL. I hope the committee will not vote down this section. It is a very good one. During the last session of the Legislature a message was transmitted by the Governor of the State calling attention to the fact that there was a large number of acts of incorporation passed at previous sessions of the Legislature, providing for the incorporation of railroad companies, manufacturing companies, and a great many other kinds of companies that had never been organized, and the Governor drew the attention of the Legislature to the fact, so as if possible to prevent the Legislature from passing a bill that was introduced extending the time for taking out those charters. This sec-

tion is intended to prevent the abuse of passing acts of Assembly for purposes of sale. It is well known that of late years it is a regular practice for certain persons in the Legislature and out of it, to have acts of Assembly passed that they could afterwards sell to persons who wished to get up corporations, and it was made a regular matter of traffic, to the disgrace not only of the Legislature, but of the fair name of the Commonwealth. Now, we should put this provision in the Constitution so as to prevent in the future anything of the kind from occurring. They have a section like this in one of the western Constitutions, the Constitution of Illinois. It was found necessary there, and we should have it in our Constitution also.

Mr. LILLY. I agree perfectly with the gentleman from Philadelphia who has just taken his seat, on this subject. I know that this sort of thing exists. I believe there are from one thousand to ten thousand of these charters in the hands of individuals in Pennsylvania who hold them until they can find a buyer. I had occasion a year or so ago to go to the Legislature to ask for the passage of a certain mining bill. We tried to get that bill passed, but never would give any money to secure its passage, and the consequence was it was defeated. Within three weeks after the defeat of that bill, I received twenty letters offering charters to me that could be utilized for the very purpose that we desired, in the hands of the professional borers who hang around Harrisburg and secure the passage of such bills by the score and hold them in their pockets ready to sell them out to anybody who is willing to buy. The Credit Mobilier bill was a specimen, as is suggested by a gentleman near me. Sir, there is no doubt at all that this state of facts does exist, and I think it would be better to put a stop to it here and now.

Mr. HARRY WHITE. I am not going to discuss this section. What the delegates who have preceded me have said makes the necessity of its passage clear. I am satisfied that such a practice exists as has been referred to. Bank charters have been passed in that way. By a recent act of Assembly it has been provided that the enrolment tax must be paid on them by the 1st of May. Any act creating any privileges, which is liable to pay the enrolment tax, and on which the tax has not been paid by the first of May, of course falls; but I know there are be-

ing hawked about the streets of this city bank charters and other charters, and the passage of a section of this kind in this article will put a quietus on them. I hope it will pass.

Mr. CUYLER. I do not see any use in this section, and do not believe it will accomplish any good whatever. In the first place it will not reach the class of cases to which my colleague from Philadelphia (Mr. Campbell) has alluded. This section points to existing charters. It therefore will not reach those cases where the enrolment tax has not been paid, and therefore the legislation has not become operative. That class of cases it does not touch at all.

In the next place its language is, "existing charters or grants under which a *bona fide* organization shall not have taken place." Those who obtain special charters which they sell take precious good care to have a *bona fide* organization under the charter. Everybody knows that the statement is true, that these charters are hawked about, but nine times out of ten they come to the happy use as they did in the case of the gentleman from Carbon. I have no doubt he wanted it for a very wise purpose, and I have no doubt the corporation which it contributed to bring into existence is a very proper corporation. It is not often that much harm is done by them. But this section would not reach the case of those charters, because so far as my knowledge has gone, the moment they are obtained companies are organized.

Finally, we have a general law of the State to-day that is effectual for all the purposes for which this section was designed. The Legislature passed some three or four years ago a bill which I drew myself, whereby all franchises of all kinds conferred either upon existing corporations or corporations that were thereafter to be created, are blotted out if not used within five years. That is a general law of the Commonwealth to-day. At the end of five years, parties who go to the Legislature and obtain franchises, whether they be existing corporations or whether they be new corporations that are thus created, lose the rights which the Commonwealth has conferred upon them, and they lapse back again into the possession of the Commonwealth. That answers every purpose. I do not know of any mischief now existing in the Commonwealth in the direction to which this section points or which this section, if adopted

and made part of the Constitution, would tend in any way to remove or remedy. I think it is useless. Besides it belongs in the department of legislation. It is no part of the Constitution. It might be wise in some degree in a code, but it is wholly out of place here; and I hope the section will be negatived.

Mr. HARRY WHITE. I wish simply to make a suggestion in reply to the observations of the very learned gentleman who has just taken his seat. He is in error, unconsciously of course, in remarking that this section will not correct the difficulty alluded to by his colleague from Philadelphia and the delegate from Carbon. Let me read the language of the section:

"All existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place at the time of the adoption of this Constitution, shall thereafter have no validity."

What is the meaning of that? Any act of Assembly that was passed at the session of 1871, if you please, or 1872, on which the enrolment tax has not been paid, is a nullity.

Mr. CUYLER. Will the gentleman pardon an interruption?

Mr. HARRY WHITE. Certainly.

Mr. CUYLER. I should like to ask him whether a charter is existing where no enrolment tax has been paid? Does the charter exist until the law has become perfected both by the signature of the Governor and by the payment of the enrolment tax?

Mr. HARRY WHITE. The delegate is certainly correct on that point, and if he had heard me out he would have understood that I agree with him exactly in that regard. An act passed in the session of 1872, authorizing, for example, Mr. Carey and myself to organize a bank, if the enrolment tax is not paid by the first of May, 1872, falls. There is no difficulty about those cases. But there is a class of cases where acts have been passed, creating corporations for speculative purposes, and those charters are held to-day, with the enrolment tax thus paid, as articles of merchandize, and they are hawked about the streets of Philadelphia and through this Commonwealth from time to time. Those are the cases that will be reached by this section.

Mr. CUYLER. Will the gentleman pardon another question?

Mr. HARRY WHITE. Certainly.

Mr. CUYLER. I ask the gentleman whether all such charters as he speaks of are not made perfect by an organization? So far as I have had any knowledge of them, and I have seen a great many of them, the holders of those charters have taken good care to make an organization; and, in the next place, if they have not done it already, long before this Constitution shall have been adopted by the people, they will go through that form.

Mr. HARRY WHITE. In answer to the remark of the delegate, I will state to him positively that they have not in many instances. I know of some instances myself. I know of an offer being made to some friends of mine, of a charter to organize a bank in any place in this broad Commonwealth that they saw fit. The enrolment tax had been paid. You can only reach that by some provision of this kind or by some act of Assembly which repeals it. Those are the class of cases that bring legislation into disrepute, and a section like this will administer the proper correction.

Mr. BROOMALL. The object of this section, it seems to me, is all right enough; but the peculiarity of it is that it proposes to repeal a class of existing laws without our having the power to see them and know what they are.

Again, it proposes to administer a present remedy to a present evil. It operates only upon the charters that now exist, looking as if its place was rather in the schedule than in the body of the Constitution. If the section was so framed as to prevent the Legislature from doing that mischief hereafter, I would vote for it; but I cannot vote for a section that repeals laws which I have not seen, and goes no further than that. I cannot vote for a section that proposes simply to cure an evil up to the present time, suffering that evil to be perpetrated again on and on. Besides, as the gentleman from Erie (Mr. Walker) suggests to me, the whole thing can be accomplished by an act of Assembly. It is the business of the Legislature to do with respect to this class of cases precisely what they have done with respect to the much larger class of cases where the enrolment tax has not been paid.

Mr. DODD. I had not intended to say anything on this point, and shall say but a few words now.

It is well known that a charter is a contract. When the privilege is granted by the State and accepted by the company,

which acceptance is the organization under the act, it becomes a contract which neither an act of Assembly nor the Constitution can annul. The consequence is that when the Legislature, unwisely, corruptly or hastily, grants any charter whatever, it becomes a perpetuity, unless there is some means provided in the charter itself or under the Constitution, like the amendment of 1857, perhaps, by which, when it becomes injurious to the people of the State, it may be rescinded or annulled.

The Pennsylvania Legislature for a number of years past have been granting charters by the hundred; I might say properly by the thousand perhaps, for they amount to that; and in most cases they have been granted not for any immediate use, but to special favorites, or to some already great corporation, or they have been purchased, to use plain English, and are now offered for sale. Under most of those that have been lying around for the last four or five years, organization has not taken place, because organization does not take place until a purchaser is found for the charter, who needs it for some special purpose, and then organization takes place and the charter is used.

We propose, by means of the article upon legislation, by means of the article already adopted in relation to railroads, and by some further provisions in this article on corporations, to place certain restrictions about the granting of such charters and about their use after being granted, and we deem it advisable that corporations, like individuals, should become subject to this Constitution when adopted; but our Constitution does not affect corporations already in existence on account of there being a contract which the Constitution cannot affect, and all we ask is that these spurious corporations which have not accepted the contract shall become subject to this Constitution, that they shall not be above the Constitution and remain for sale, so that, a higher price will be placed upon them and they be hawked around as more valuable than they now are. If they are made for a purpose, if a *bona fide* organization is intended to take place, let the Legislature re-grant them, or let them secure their charter under the general law which will be passed by the Legislature under this Constitution, if adopted.

Now, I desire to state that I know something personally in relation to some of these charters. I know that there have

been a number of charters, amounting to ten or fifteen, granted under the name of improvement companies. We became well acquainted with, and the country knows well about one of them, the South improvement company. I say that there are fifteen or twenty just such charters, under which organization has not yet taken place; and I say further that those charters are to-day for sale in the office of the Pennsylvania railroad company on Fourth street, in the city of Philadelphia, and they are held at rates from \$5,000 down. I know it, because I was present when one of them was purchased, not six months ago, by certain individuals who wanted it. One was held at \$5,000, and others were offered at lower rates, and one was purchased and organization took place under it in the office of that company then and there.

MR. CUYLER. If the gentleman will pardon me an inquiry, do I understand him to say that the Pennsylvania railroad have such charters for sale?

MR. DODD. I said they were for sale at the office of that company. I do not know whether the Pennsylvania railroad company knows of it or not.

MR. CUYLER. Will the gentleman be good enough to designate any individual connected with that office who has any such charters for sale?

MR. DODD. Yes, sir; J. J. Barclay.

MR. CUYLER. I do not know him.

MR. DODD. The name of Barclay was on the office and the name of Moon, and a third person whose name I do not now recall.

MR. CUYLER. I know no J. J. Barclay having any relation in any way to that company? I know a Mr. R. D. Barclay. Is he the gentleman to whom you allude?

MR. DODD. Perhaps I mistook the initials.

MR. CUYLER. J. J. Barclay is a well-known, venerable lawyer of this city.

MR. DODD. R. D. Barclay is the name.

MR. CUYLER. I understand you to say that he has fifteen such charters for sale?

MR. DODD. No, sir, I did not specify the number. I say he has them for sale, and I was present when one of them was bought of him. How many may be left, I do not know. I know there were others for sale that day; and my business there, if the gentleman wishes to know it, was to examine those charters and as an attorney advise the purchasers as to which was the best for their purposes.

I say then, for the purpose of destroying these embryo privileges, which should be destroyed, which are a curse to the State of Pennsylvania, and a disgrace to the Legislature that passed them, this section should be adopted.

Mr. STRUTHERS. I move to amend the section in the third line by inserting after the word "place" the words, "and business been commenced in good faith," so as to make it read: "All existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place and business been commenced in good faith at the time of the adoption of the Constitution shall thereafter have no validity."

The amendment was agreed to.

The CHAIRMAN. The question recurs on agreeing to the section as amended.

Mr. LEAR. I should like to inquire about the meaning of this section from the committee or those of them who are here and can inform us. What is intended to be abrogated by the provisions of this section? "All existing charters," is the language, "under which a *bona fide* organization shall not have taken place, and business actually commenced," according to the amendment shall be abrogated by the adoption of this Constitution. Do they intend that that shall apply to all charters of every kind under which there shall be no organization? Or is it intended to apply to only such charters as grant exclusive powers and privileges, because if that is what is intended it had better be so expressed. The section reads:

"All existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place."

You can separate the clauses of that, and it applies directly and expressly to all existing charters. Is that the meaning of it? Is it intended to apply to all existing charters under which no organization shall have taken place; or is it intended to apply only to such existing charters as grant special and exclusive privileges? If so, let it be so amended, and let us have it understood, because we have two clauses here. We have in the first place the clause which abrogates all existing charters of any kind where there has been no organization, and then we have it abrogating all grants of special or exclusive privileges, because they are connected by the word "or;" and if there is any grant of special or exclusive privileges under which there shall have been no organization, we have

an absurd provision, because that, standing by itself, being equally applicable to this prohibition or abrogation of exclusive grants and privileges, there can be no organization under the grant of special and exclusive privileges to an existing corporation. Suppose it should be intended to apply to some grant of power to a corporation to increase the amount of its stock, or to increase its ability and power to add to its circulation of bonds, or increase the loans of a corporation already organized and in existence, then the grant of the special or exclusive privilege to such a company as that would mean nothing, because that of course is already organized. If it is intended to hit a case of that kind, or strike at it in any other way, it should be expressed in some such language as would reach it, because here we have two separate clauses in this section which read correctly and properly independent and separated from each other: "All existing charters under which no organization shall have taken place," and "all grants of special or exclusive privileges under which no organization shall have taken place."

How is an organization to take place under a grant of special or exclusive privileges to a corporation already in existence? It seems to me that there are some words in the section that ought to come out; and for the purpose of ascertaining whether the committee or those who understand this section intend those provisions to remain in, I move to amend by striking out all after the word "charters" in the first line down to the word "under" in the second line.

The CHAIRMAN. The question is on the amendment of the gentleman from Bucks to strike out the words, "or grants of special and exclusive privileges."

Mr. MACCONNELL. I hope that amendment will be voted down.

[Several delegates. "We will vote it all down."]

Mr. MACCONNELL. Then I will not say anything.

Mr. BRODHEAD. I wish to make a remark in reference to the amendment just inserted in this clause, with reference to corporations having already commenced business before this Constitution goes into effect or otherwise, their charters shall be forfeited. It will work a great deal of injury throughout this State if that becomes a constitutional provision. I myself know of an instance in which a company has been organized for over a

year; they paid a large amount for their charter to the Legislature, and they have now about half of the sum subscribed that is necessary to commence business with, and they are only waiting until a more favorable money market comes upon us so as to get the balance of the stock subscribed. That company will be wiped out entirely by the passage of this provision, although it was started in honesty and good faith, unless it shall have commenced business by the time the Constitution is adopted. That is the amendment.

The CHAIRMAN. The question is on the amendment of the gentleman from Bucks (Mr. Lear.)

The amendment was rejected.

Mr. LEAR. Now I move to amend by striking out in the first line the words, "or grants of," and inserting the word "granting," so as to read: "all charters granting special or exclusive privileges," &c.

Mr. DARLINGTON. I wish to understand as a matter of information from the gentleman from Northampton, whether I apprehended him correctly as saying that the parties who obtained the charter to which he referred paid money to the Legislature?

Mr. BRODHEAD. No, sir. I referred to the payment of the enrolment tax and the bonus on the capital, amounting to \$460 or \$470. I am satisfied there are hundreds of cases of that kind where the charters will be completely abrogated by the passage of this section.

Mr. MINOR. I am not sure but that there is virtue in the proposed amendment. Let me give you an instance. I could name to you a gas company supplying a city with gas at the present time, that has in its charter an authority to issue bonds to a certain amount. Years passed on without occasion to do it, but it was necessary to enlarge its works, and it could not do it without issuing the bonds authorized in its charter. That was a special grant limiting the amount to \$100,000. Now, the query is whether, if this clause remains in the article, it would not cut off that company entirely from the opportunity of using that power; and so with a great many others. I want to be sure about this. There are a great many companies having special grants of special powers which they use only as special circumstances requiring them arise. We ought to be guarded in our language. To say as this section says, "or grants of spe-

cial or exclusive privileges," it seems to me would be going too far, because you would thus cripple and destroy useful charters.

The CHAIRMAN. The question is on the amendment of the gentleman from Bucks (Mr. Lear.)

The amendment was rejected.

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

Mr. BOWMAN. Mr. Chairman: I cannot vote for this section as it stands, for the simple reason that I believe it to be a question for the Legislature. Why, sir, what have we presented here? We are asked now to put in the Constitution of our State an enactment, if you please so to call it, which will repeal all laws heretofore passed granting charters or conferring special privileges, where, by the amendment of the gentleman from Warren, the work has not already been commenced at the adoption of this Constitution. The language is "all existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place and business begun at the adoption of this Constitution, shall thereafter have no validity." If you would just strike out the words "the adoption of this Constitution" and insert in lieu thereof "the passage of this act," we should have a legislative enactment entire and complete. [Laughter.] That is precisely what gentlemen say they want. The Legislatures that granted these charters I suppose have a right to repeal them if the companies have not been organized under the law; but we have, as stated by the gentleman from Philadelphia, a general law that requires the organization to be made within five years or the charters become a nullity. Now, are we going to put in this Constitution something to cure an existing evil? Was that what this Convention was called here for? We should look to the future, and not go back to the past merely.

This is a repealing section of I do not know how many acts of Assembly, and it is proposed to be done here at one single dash and in a section containing about four lines. If we are going to undertake to cure all the existing evils for the last twenty years that have been caused by the improper passage of bills by the Legislature, I think we shall stay here a long time, and we shall have a volume containing our Constitution, when our work is done, that will be as voluminous as the Mosaic code, and about as

well adapted to the government of the people of Pennsylvania as that code at the present time.

Now, I wish to call the attention of the committee to the report of the Committee on the Bill of Rights. You propose to say here what the Legislature shall not hereafter do. In the seventeenth section of of that report you find this provision :

"That no *ex post facto* law nor any law impairing contracts or making irrevocable any grant of special privileges or immunities shall be passed."

You simply say that the Legislature shall not do that, and you propose to do it here yourselves, to-day, by saying that all existing charters at the adoption of this Constitution, conferring special privileges where the business has not been commenced, shall be repealed at a single dash.

Why, sir, as the gentleman from Crawford (Mr. Minor) has stated, there are charters which have been granted during the past few years organizing gas companies, water companies, and different corporate bodies are in existence to-day that are organized but have not had the time yet to commence their work and will not have commenced the work at the adoption of this Constitution, if it is adopted within the next six months or a year; but now, after they have paid their money in organizing their companies, it is proposed to strike those corporations out of existence, and say that they shall not in the future go on with their work under their charters.

Now where is the Constitution of any State in this Union that contains such a clause?

Mr. CAMPBELL. Illinois.

Mr. BOWMAN. Illinois! Well, it contains a great many foolish things, and this is one of them. It is purely legislation. If the people are dissatisfied with this state of things which it is said exists, the Legislature can repeal these charters.

Mr. BEEBE. Will they do it?

Mr. BOWMAN. Send better men there; let the gentleman go there himself, and I venture to say that he will do it. It is a question of legislation, and that is one reason why I am opposed to it. It proposes to repeal acts of the Legislature passed by the people's representatives, which I think ought not to be done by a provision in the Constitution.

Mr. J. W. F. WHITE. Mr. Chairman: I do not consider myself as the representative of the Committee on Corporations

by any means, and I did not think that I should make any remarks on this entire report, as it seemed to be the desire of the committee to vote everything down. I did not know that I should advocate any one of the sections of this report; but it seems to me that the object in reporting this section has not been understood by the committee here, and I rise simply to explain. It is proposed that we shall establish certain rules and regulations in this article in reference to corporations; that all corporations that may be formed after this Constitution shall be adopted shall come in under the provisions of this Constitution; that they shall possess only such powers and privileges as may be authorized by this Constitution.

As was suggested by the delegate from Venango, (Mr. Dodd,) this Convention cannot interfere with those charters which have been previously granted by the Legislature where a perfect organization has been effected. It is known that a great many charters exist in the State where there has not been a *bona fide* organization in pursuance of the charter; that many of those charters floating around and for sale throughout the State have peculiar privileges that will not be allowed under this Constitution. If gas companies or any other companies have not organized, if there has been no organization under such charters, the question arises, shall they be permitted to organize under special charters that they may have obtained in previous years, possessing rights, powers and privileges not authorized by the Constitution at the time they may be organized as corporations, or shall they be compelled to take out charters in pursuance of the new Constitution and the laws that may be framed in accordance with it? That is the question, and if there be nothing in this Constitution on the subject, those floating charters will command an enormously high premium in the market. In place of their being sold for \$5,000, as the delegate from Venango said, I venture to say that if we should incorporate provisions in the Constitution we are framing, prohibiting special rights and privileges, and opening the door to all and confining all to the provisions that may be embraced in our Constitution here, some of those floating charters now in the State may be worth tens of thousands of dollars if they can be purchased and organizations made under them years after the adoption of this Constitution.

There will be no hardship in requiring these companies that have not yet been organized to submit to the conditions we impose.

Mr. BOWMAN. I should like to ask the gentleman a question. For how many years after the adoption of the Constitution will these charters exist?

Mr. J. W. F. WHITE. Indefinitely. If they have paid their enrolment tax and got their charter, how long now may they hold it before they organize? I apprehend twenty years. There may be a limit, but I know of none.

Mr. CUYLER. There is a limit of five years.

Mr. J. W. F. WHITE. Well, then, five years. For five years men may hold these charters throughout the State for no purpose under the heavens but to make money out of those who may be willing to pay a premium on such charters conferring exorbitant rights and privileges, and powers and privileges which will be prohibited by this Constitution at the very time those charters may be purchased and go into operation.

I have been unwilling myself all along to put legislative enactments into our Constitution; but it seems to me that a clause of this kind, either 'n the Constitution or in the schedule, is an absolute necessity if we mean to carry out these provisions and prevent parties from taking advantage of heedless legislation or legislation obtained for the very purpose of making money.

Mr. CUYLER. Will the gentleman pardon an inquiry?

Mr. J. W. F. WHITE. Certainly.

Mr. CUYLER. All that is required by this section being that there shall be a *bona fide* organization, I ask the gentleman whether he supposes that every charter of this sort that is in existence will not resolve itself into a *bona fide* organization before the Constitution goes into effect. In other words, does the gentleman suppose that there is a single one of these charters thus peculiarly situated to which he alludes, that will not have evaded the whole force of the provisions of this section before the Constitution goes into effect, by the parties simply organizing under it?

Mr. J. W. F. WHITE. I will answer the gentleman that this section strikes out hundreds and perhaps thousands of charters in the State. What is meant by *bona fide* organization? It does not mean simply the election of officers, where the

election of officers is merely for the purpose of keeping vitality in the organization, and afterwards selling out. That would be a question for the courts afterwards; and I apprehend that those charters would be worth very little where there was not an actual *bona fide* organization for the purpose of carrying on the business authorized by the charter. If there is merely an election of officers without a capital raised or a merely nominal amount paid in, a few cents or dollars on the share, with no place of business, nothing purchased, nothing done, I apprehend that such charters in the market would not be very valuable with such a provision as this in the Constitution, because they might have to go through the courts, when the courts would say that such an organization was a fraud and not a *bona fide* organization.

I have said, sir, far more than I intended to say on this section when I rose; but it seemed to me that the object of the section was really not understood. I am willing that the Convention, if they think fit, shall vote it down; but it seems to me that some provision of the sort is necessary.

Mr. CLARK. Mr. Chairman: I can see myself no objection to the passage of this section. It takes two to make a bargain, I believe. Now, a charter is merely the offer of the State, and until that charter is accepted by an organization or the commencement of business under it, it stands simply as an offer. It may be recalled at any time before the charter is accepted. When it is accepted and an organization takes place or business is commenced under it, then it becomes a contract under the many adjudications which we have on that subject. I apprehend, therefore, that the difficulty suggested by the gentleman from Erie (Mr. Bowman) does not exist, and that that is not an *ex post facto* law which would merely recall an offer that has not been accepted. If the Legislature extends to a party the right to have certain exclusive privileges, before he accepts that right it is within the power of the Legislature to recall it, and the act of recall would not be an *ex post facto* law. I can see no difficulty upon that subject.

It is said, then, that the Legislature may do this. I agree that it may. There are many things that the Legislature might do which they do not do; and if we had adopted the principles at the beginning, when we started out with this great work



of forming a Constitution, that we would do nothing that the Legislature could do, there might be some force in the objection made now. But we have done many things in the past in our conduct as a Convention which the Legislature could have done, but which we knew very well by past experience they would not do. Now, if this is a desirable thing, it is proper that we should do it.

The section provides that all existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place at the time of the adoption of this Constitution, shall thereafter have no validity. It is said that this is intended to remedy a present evil only, and provides nothing for the future. I apprehend that our duty is to provide that which shall apply hereafter. We are to cure the present evils and we are to provide against the evils which may recur in the future; but this is one section only; and if gentlemen of the committee will read all this article over, they will find many restrictions on the future conduct of corporations in this Commonwealth. It was not convenient or practicable to embody all of them in one section.

This is intended to remedy a present evil, and it seems by the testimony of all who have spoken on this subject that there are many thousands of charters in the hands of a great many individuals throughout the Commonwealth under which an organization has never been made, under which no business has ever been done. If they were obtained from the Legislature honestly, and therefore gratuitously, it is proper that they should not be held for purposes of speculation. I have learned—I cannot speak further—that the Legislature at times, through influences extraneous to their own body, have refused charters in order to compel parties desiring the use of such privileges and rights to buy those charters which were outstanding, and were outstanding and being hawked upon the market. This is entirely wrong. Why not put an end to all these things as they now exist, and prevent the recurrence of this difficulty in the future?

But it is said that we have tautology here; or the gentleman from Bucks, as I understood him, objected that the expression “grants of special or exclusive privileges” has no meaning whatever. I think it has a meaning. I imagine that the Legislature might give to an individual the

right to establish a ferry at some convenient point across a river. That would be an exclusive right and an exclusive privilege; and yet there would be no charter for it in the ordinary sense in which we understand the word “charter.” In order to embrace all charters for corporations as well as all grants to private individuals of special and exclusive privileges, we have embodied both expressions in the section.

Then come the words, “under which a *bona fide* organization shall not have taken place.” The organization must be *bona fide*. If that expression has not some important meaning, why were the words “*bona fide*” not omitted altogether?

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

Mr. CLARK. Yes, sir.

Mr. LEAR. How would an individual to whom the privilege of building a bridge or running a ferry across a river was granted, organize himself?

Mr. CLARK. The word “organized” only refers to what is covered by the term “charter.” I understand the amendment offered by the gentleman from Warren to have relation to that portion of the section speaking of grants of exclusive or special privileges. A man could not organize himself, to be sure, in the case supposed; he has no organization to make; but he can proceed to the enjoyment of the right which has been granted to him by the Legislature; and that is what is meant?

But it is said that any organization will cure this, I apprehend not. If any organization will cure it, why use the words “*bona fide*?”

Mr. CUYLER. Allow me to suggest that it does not say “upon which work shall have been commenced or something done.” All that is required is that they shall have actually made a *bona fide* organization. What does that mean? It means an organization such as the charter requires, of course. It cannot mean anything beyond that.

Mr. CLARK. It means an organization in good faith. It is not an organization merely intended to keep up the thing, to avoid the constitutional prohibition; but it is an organization made in good faith towards the thing for which the company was chartered. That is what it means—an organization in good faith under the charter to do the business which they were authorized to do by the charter, and not a mere organization for the simple purpose of preventing the operation of this section. I think this is a proper section and

it ought to receive the favorable consideration of this committee.

Mr. DALLAS. Mr. Chairman: I rise only to make a suggestion to meet the objection made by the gentleman from Philadelphia to my right (Mr. Cuyler.) If he can so understand the language as he has expressed himself as understanding it, then certainly it is objectionable, because if so good a lawyer can raise a doubt about a constitutional provision, it only makes it clear that there should be no language in the section justifying that doubt. I therefore suggest to the gentleman, whoever that may be, having this section in charge in the absence of the chairman of the committee, that it might be altered so as to read: "All existing charters or grants of special or exclusive privileges under which an organization for the *bona fide* purpose of the charter shall not have taken place." If that change were made it would be liable certainly to no objection on that ground. I simply make the suggestion in order that the section may be perfected.

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

The section was agreed to, there being on a division: Ayes forty-five, noes two.

The CLERK read section six as follows:

SECTION 6. The Legislature shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same for the benefit of such corporation, except upon the terms of such corporation thereafter holding such charter, subject to the provisions of this Constitution.

Mr. CAMPBELL. Mr. Chairman: This section applies to all corporations the provision that was applied, in section twelve of the report of the Committee on Railroads and Canals, to railroad and canal corporations, and I think the committee had better adopt this section, and then on second reading of the railroad report, if necessary, that section of the railroad report may be stricken out so as to have this section apply not only to railroad corporations, but to all other corporations in the State.

When that subject was before us, the committee of the whole, by a vote of about five to one, voted in the section in reference to railroad and canal companies, and if they wish to extend that principle they will now vote for this section as it stands in the report.

Mr. BOWMAN. I should like to inquire of the gentlemen who have this report in

charge whether this particular section now under consideration has any sort of reference to railroad corporations or does it apply to all corporations?

Mr. CLARK. I am a member of this committee. The chairman of the committee is absent. On account of his absence Mr. Turrell was acting chairman of the committee, but he is also absent, and we who are speaking to this report are merely journeymen. I believe this section had special reference to all corporations, including railroads.

Mr. BOWMAN. Then I raise the point of order that the committee making this report were not authorized by their appointment to consider the matter, and they have transcended their authority.

The CHAIRMAN. The point of order is not well taken.

Mr. BOWMAN. Let us see whether it is or not. This is "a Committee on Private Corporations, foreign and domestic, other than railroads and canals, and religious and charitable societies." It is the report of that committee that we are considering. If it embraces railroad corporations and all other corporations in the State, then I submit whether we have not had that report on corporations to which I have specifically referred under consideration by this committee before. We have had railroads and canals before; we have got them now, if the gentleman is correct.

The CHAIRMAN. The point of order is not well taken. The matter now before the committee is the report of the Committee on Private Corporations. The sixth section is before the committee of the whole. The question is on the section.

The section was agreed to, ayes forty-five, noes not counted.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 7. The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking by the Legislature of the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals. And the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such a manner as to infringe upon the equal right of individuals, or the general well-being of the State.

Mr. CUYLER. I was unfortunately out at the moment the sixth section was acted

upon. Had I been here, I should have called attention to the fact that precisely the provisions of this section are to be found in the twelfth section, already adopted, in the railroad report.

As to the seventh section, that is the law of Pennsylvania to-day and has long been the law. I do not know that it is doubted in the professional mind anywhere. The existence of the power of the State to take a franchise, like any other property, for public use, is not doubted so far as I am aware of anywhere in this country or in England. It is a power occasionally exercised, and the existence of which is recognized even among text writers on railroad law. And so as to the second portion of this section, with regard to the exercise of the police power of the State over corporations in such a manner as to prevent the infringement of the equal rights of individuals and the general welfare of the State, I think nobody doubts that that is the law of Pennsylvania to-day. Why incorporate this, which is part of the common law of the land, into the Constitution? It did not need even a statute to make that the law of this State. It was the law of the State by force of the common law and required no statute at all; and yet we are to take that very thing which does not require even a statute to make it the law of the Commonwealth, and write it in as a part of the Constitution of the State. I hope the section will be negatived.

Mr. MACCONNELL. Mr. Chairman: The learned gentleman from Philadelphia tells us that this is the common law of the State now. I suppose it is, but I fear that the Legislature might be persuaded to alter the common law in that respect. We know they have been persuaded to do so in other respects, and I think we had better put it in such shape that no persuasion can be brought to bear upon the Legislature to lead them to alter the common law in this respect. I would put it out of the power of the Legislature to alter it.

The CHAIRMAN. The question is on the section.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 8. The stockholders of every corporation doing business in this State shall be individually liable for its indebtedness to an amount equal to the par value of the stock held by them respectively

when such indebtedness was incurred; and this liability shall not be held to be a penalty, but shall be taken to be a part of the contract under which such corporation may transact business in this State.

Mr. CAREY. Mr. Chairman: Some twenty years ago the Legislature passed an act to prevent associations, although it was called an act to promote associations; and in it imposed just such a restriction as this; and what was the consequence? The law has been a dead letter from that time to this. By various laws we have learned from experience abroad, and in Massachusetts, New York, Ohio, but especially in England, that limited liability is the road towards civilization. It commenced in Massachusetts. The consequence has been that Massachusetts has been covered with corporations, and it has abounded in banks that some of our friends are so much afraid of, that secure plenty of money, and consequently they are able, in some measure, to dispense with usury laws. There is no part of the world that has been so covered with corporations as Rhode Island and Massachusetts, and they have found them so beneficial that they have never ventured to impose any liability beyond a simple provision for paying the wages of laborers. New York followed their example, and as long ago as 1822 passed a most liberal law, providing that any set of men might associate for any legal purpose whatsoever, and by complying with certain very simple forms they become incorporated, and are freed from all liability except the one I have spoken of—wages of laborers. Ohio followed the example, and she has a law almost exactly like that of New York and Massachusetts. Five-and-twenty years ago there was no part of the world that seemed so determined to maintain the antiquated responsibility imposed by the law of partnership as England. They at last opened their eyes in 1851, and they passed an act providing that all persons might associate for all legal purposes, banking associations issuing notes only excepted. The provisions were the most simple imaginable, and they were freed entirely from liability. It was not even provided there that wages should be paid, but it is provided that there shall be the most perfect publicity given to the fact that the liability is limited. It is required there that the word "limited" shall constitute the last word of the name of the company; for example, the "Royal Exchange Insurance Company—Limited,"

and there are heavy fines for issuing any paper or doing any business in any shape or form where the word "limited" does not make its appearance. There they are very much ahead of us in this respect.

Very slowly, but gradually, we have opened our eyes to the folly of our past course, and at the last session of the Legislature for the first time we got a tolerably decent act providing for promoting associations. The Legislature passed an act providing for the formation of iron and steel companies, freeing the associates from all liability whatever except the payment of wages; and a fortnight or three weeks afterwards that law was extended so as to embrace a great variety of other departments of manufacture.

Now, what we really want, and it would supercede nearly all this, is a declaration of rights providing that all men shall have power to associate on principles of limited or unlimited liability, simply providing that there shall be perfect publicity.

Here we are asked to go backward after having at the very last session of the Legislature freed ourselves from the shackles under which we have suffered—those shackles which compelled our people to go to the Legislature; and those restrictions were the cause of an immense portion of the corruption that has existed at Harrisburg. Nobody could avail himself of the general law; the liabilities were so severe, so heavy, that no man who had anything to lose would become a member of a company under that general law. What was the consequence? Every set of men that wanted to associate found themselves compelled to go to the Legislature and get an act freeing them from liability. Here we are providing in the Constitution that that liability shall be perpetual. If we put it in here, we cannot get rid of it. The Legislature has just freed us from it, and yet we are going to restore it! It is going back to the middle ages; it is a retrograde step such as is not to be found in any community in the world. We have just begun to emancipate ourselves, and now we are asked to put the chains around our wrists again. I do trust that this section will be voted down.

The CHAIRMAN. The question is on the section.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read section nine as follows:

SECTION 9. Corporations shall be liable for all injuries resulting to persons or property from the negligence of their agents, servants or employees in the discharge of their duties, and such liability shall not be limited by any act of the Legislature or regulation of the corporation.

Mr. CUYLER. That has already been acted upon in the article relating to railroads and canals, and after a very earnest discussion it was adopted, as I thought unwisely, but still it was adopted as part of that article. It is, therefore, wholly unnecessary, as I think, to pass it here.

Mr. CAMPBELL. I do not think it will do any harm to have it adopted here; and then when the articles come up on second reading there will be found several things that will have to be harmonized in different reports. If the section here is more comprehensive than the one adopted in the report of the Committee on Railroads and Canals, we can then adopt it instead of the railroad section and strike the railroad section out, or *vice versa*, just as we think best. I hope, therefore, the committee will at present vote in this section.

Mr. DARLINGTON. I should be glad to know what part of the report of the Committee on Railroads and Canals contains this. I do not think it is there at all. ["Yes, it is."] Where? In what section?

Mr. CUYLER. It was in the report of the Committee on the Legislature.

Mr. HARRY WHITE. No; section twenty-three of the article on legislation.

Mr. CLARK. It may be that we have in the consideration of the railroad report passed a section similar to this, but I am not able to turn to it.

Mr. HARRY WHITE. The delegate will allow me to say that if he will refer to the report on legislation, section twenty-three, he will find this precise provision:

"No act of the Legislature shall limit the amount to be recovered for injuries resulting in death, or for injuries to person and property, and in case of death from such injuries the right of action shall survive and the Legislature shall prescribe for whose benefit such actions 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."

Mr. CLARK. It is very clear to my mind that this was a subject properly referred to the Committee on Corporations. It was certainly a part of the subjects submitted to us, and we have reported such action as the committee thought ought to be reported to cover that idea. I think it proper, therefore, that this section nine should be passed upon affirmatively by this committee, and if on second reading we discover that the two provisions may be consolidated in one so as to express precisely and clearly the sentiment of the Convention, it can then be done; but clearly it was part of our duty to pass on this very question and I apprehend it was much more properly within the scope of our duty than it was within the scope of the Committee on Legislation.

Mr. DARLINGTON. Mr. Chairman: I cannot call to mind as far as my recollection goes the passage of a section of this kind. I remember there was a provision against limiting damages. This goes further:

"Corporations shall be liable for all injuries resulting to persons or property from the negligence of their agents, servants or employees, in the discharge of their duties, and such liability shall not be limited by any act of the Legislature?"—

Thus far we have substantially gone; but this goes farther:

—"or regulation of the corporation."

Now do we design to say that the corporation shall not make any regulation to limit its liability with regard to its own employees? Everybody knows that the regulation made by most corporations is in order to ensure fidelity on the part of employees themselves, that if they get injured any way they shall not hold their fellow-employees responsible, or that the corporation that employs them shall not be answerable to servants for the negligence of other servants of the company. That was the idea, so as to make them careful to be guilty of no negligence themselves. It seems to me the words "or regulation of the corporation," should be stricken out.

Mr. CORBETT. Mr. Chairman: I do not see the necessity of adopting this section. It is true that it may have been very proper for the committee to report it, but when we find a section already adopted fully as comprehensive, except so far as this is merely declaratory of

what was the common law, I see no necessity for adopting it. Let us do what we ought to do here in the shape of pruning down, and not send into the Convention two sections exactly similar in principle. There is no necessity for it. If there is anything that this embraces which is not embraced in section twenty-three of the article on legislation, it might be proper to adopt it; but section twenty-three of the article on legislation has passed through the committee of the whole. Certainly, if this does not embrace something more, or is not broader in its terms, there is no necessity for adopting it, although it has been properly reported by the Committee on Corporations.

Mr. HARRY WHITE. I do not care where I find virtue, in what report, I will accept it. I meant to say what my friend from Clarion has said, that if delegates will read carefully they will discover that the first two lines of this section merely reiterate what is the common law, what our Supreme Court have announced, from time to time is the common law, and then comes the limitation.

I will call the attention of delegates furthermore to the fact that the section reported by the Committee on Legislation is much more comprehensive and meets the anticipated evil much more directly than that reported by the Committee on Corporations.

The Convention will understand that the right to recover for the death of a party is not a right at common law. That is a mere statutory right. You anticipate the possibility of the Legislature taking away that right at some time. The section reported by the Committee on Legislation provides that no act of the Legislature shall limit the amount to be recovered for injuries resulting in death or injuries to person or property; and in case of death from such injuries the right of action shall survive and the Legislature shall prescribe who shall prosecute the action. There is nothing of that kind in the section reported by the Committee on Corporations, but merely a reiteration of the common law to be found also in section twenty-three of the report on legislation and an additional prohibition against the Legislature limiting the amount to be recovered. Now we find the same thing I think more comprehensive in section twenty-three of the article on legislation.

Mr. LILLY. I think the last words of the section ought to be stricken out. It is well known that corporations of differ-

ent kinds have very dangerous employments for which their employees contract to do the work, taking the risk for increased compensation. It is understood that when they undertake a hazardous duty they are paid in accordance with the risk they take upon themselves. I think for that reason those last words should be stricken out, and I therefore move you, sir, to strike out the words, "or regulation of the corporation."

The amendment was rejected.

The CHAIRMAN. The question is upon the section.

On the question of agreeing to the section a division was called for, which resulted twenty-four in the affirmative. This being less than a majority of a quorum, the section was rejected.

The CHAIRMAN. The next section in order is the tenth, which will be read.

The CLERK read as follows :

SECTION 10. Private property shall not be taken, damaged or appropriated by any corporation for public purposes, until full compensation shall be first paid or adequately secured, which compensation shall be the actual value of the property taken or the damages likely to be sustained, and shall if desired by any party in interest be ascertained by a court and jury of the county where the property is situated.

Mr. ANDREW REED. I move to amend by striking out all after the word "jury," near the end of the section.

The amendment was rejected.

Mr. CORBETT. I ask if we have not already adopted a general section which covers this ground, in the report of the Committee on Railroads and Canals.

Mr. CAMPBELL. The Committee on the Judiciary.

Mr. CORBETT. It may have been in the article reported by the Committee on the Judiciary ; but I think it was in the report of the Committee on Railroads and Canals. At all events I recollect that we had such a section reported. It elicited a very active discussion and was amended at the suggestion of the President of this Convention, Mr. Meredith, so as to meet the views of the majority of the committee of the whole. I believe that section is in better shape than this, and, if so, I see no necessity for now adopting this.

The CHAIRMAN. The Chair will state, in answer to the inquiry of the gentleman from Clarion, that he has no recollection of any such section. There have been too

many sections passed for all to be remembered by the Chair.

Mr. CORBETT. I recollect very well that there was just such a section passed. It was amended so as to include injuries sustained by property being affected, even though there be no property taken.

Mr. CUYLER. I will just call the attention of the gentleman from Clarion to the tenth section of the report of the Committee on Railroads and Canals :

"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 as 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."

Mr. CORBETT. I recollect very well that the section was adopted after a very full discussion. It is in a better shape than this, and I suggest therefore that this section is now unnecessary.

Mr. CLARK. The section now before the committee of the whole was passed when the Committee on Private Corporations were discussing the question of railroads. I remember very well the passage of the section in the article on railroads and canals, which the gentleman from Philadelphia has just read. It was discussed long and earnestly, and the word "corporations" was inserted and the provisions of the section made general. I think that section covers all the ground embraced by the section of the article on Private Corporations now under discussion.

The CHAIRMAN. The question is upon the section.

The section was rejected.

The CHAIRMAN. The question is upon the next section, which will be read.

The CLERK read as follows :

SECTION 11. In all elections for the managing officers of a corporation, each member or shareholder shall have as many votes as he has shares, multiplied by the number of officers to be elected, and he may cast the whole number of his votes for one candidate or distribute them upon two or more candidates as he may prefer.

Mr. CAMPBELL. Mr. Chairman : When the report of the Committee on Suffrage, Election and Representation was before the House, the committee of the whole voted down a section similar to this section reported by the Committee on

Private Corporations, with the understanding that it should be acted on in another place, that it did not properly belong to the subject contained in the report of the Committee on Suffrage, Election and Representation, but belonged more properly to the article on Corporations.

With reference to this section, I hope it will be adopted by the committee of the whole, so as to allow the minority of the stockholders of a corporation to have a voice in the management of its affairs. Now they practically have no voice, but by adopting some such provision as this they will, beyond a doubt, have the power of electing as many of the directors and managers of a corporation as their number of shares will entitle them to, and they will practically have the voice in the management of the affairs of the corporation that they should be entitled to. This principle is familiar to all. It has already been adopted in reference to some corporations in other States, in the State of Illinois, for instance, and I think it should also be adopted by the State of Pennsylvania.

Mr. CUYLER. Mr. Chairman: I think it is a great calamity to the people of Pennsylvania that the people of Illinois have a Constitution—

Mr. ADDICKS. I think so, too.

Mr. CUYLER. It is a still greater calamity that they have published their Debates. We should have learned wisdom from their sad experience and should not have published ours.

I am not sure that I understand this section. If I do, it is a very dangerous one. It permits every shareholder to multiply his number of shares by the whole number of officers to be elected and cast all his votes for one candidate. Under the operation of such a provision a gentleman owning a very few shares in any corporation could elect Satan to be a director in the company. Let us take the illustration of the Pennsylvania railroad company. Suppose a man owns ten thousand shares of the stock of that company and he multiplies that by twelve or fifteen, the number of directors to be elected. The concentration of that vote on any one man may elect him to that board, even though he be a very improper man, and a man who when elected will serve the special private ends of the friend who elected him and not the general public purposes required in the proper management of the affairs of the company. Such

a section as this could place such a man in that board of directors, and all the power of the conservative and right-minded men of that corporation could not keep him out. They would be wholly powerless.

This is not the introduction of the limited power of voting here at all. It is the creation of an entirely new and unheard of system, the operation of which it seems to me must be utterly disadvantageous. I pause to hear any argument that can be urged in its favor. I shall be glad to hear from any gentleman who sat in the Committee on Private Corporations what it was that induced them to propose any such extraordinary provision as that.

Mr. BEEBE. I would like to ask the gentleman from Philadelphia whether the individual he referred to would be likely to be elected a director of the Pennsylvania railroad company unless he were a stockholder? [Laughter.]

Mr. CUYLER. Under such a strange provision as this, I do not know what might not be done.

Mr. LILLY. The gentleman from Philadelphia asks why this section was adopted. I desire to say here that one Philadelphian who was heavily interested in a certain corporation came to me last week and said, "I and my family own forty-nine one-hundredths of a certain corporation, and yet that corporation is so managed that we cannot get a representation in it; we have tried over and over again to secure a voice in its management; we have been to the elections and we are always voted out; we are not represented and we cannot be represented." Perhaps that may be the reason why such a section as this was proposed here. Certainly it seems to me a sufficient reason why it should be adopted.

Mr. CLARK. It seems to me that this section contains some very important thoughts. I regret very much that the chairman of the Committee on Private Corporations is not here. I believe I can see but two members of the committee here to-day. This is a very important point to consider, and the whole report is important, yet it seems to be almost impossible to pass any section through this committee of the whole by the vote of a majority of a quorum. I apprehend that there are not forty members present, and I therefore ask for a count of the House.

The CLERK counted the members present and reported fifty-five in attendance.

The CHAIRMAN. There is not a quorum of members present, and the committee of the whole rises from that fact.

The PRESIDENT *pro tem.* resumed the chair, and the Chairman (Mr. Stanton) reported that the committee of the whole found on a count of the House that there were not a quorum of members present.

Mr. LILLY. I move to adjourn for want of a quorum.

Mr. DARLINGTON. I suggest that there is a quorum of members present.

Mr. J. PRICE WETHERILL. I ask for a call of the House.

The PRESIDENT *pro tem.* The question is upon adjourning.

Mr. J. PRICE WETHERILL. No, sir; I demand a call of the House.

The PRESIDENT *pro tem.* It has been moved to adjourn, and that motion is in order.

On the motion to adjourn, the yeas and nays were required by Mr. Mann and Mr. Harry White, and were as follow, viz:

#### Y E A S .

Messrs. Baily, (Perry,) Bowman, Brown, Carey, Curtin, Dodd, Hanna, Harvey, Kaine, Littleton, Ross and Worrell—12.

#### N A Y S .

Messrs. Achenbach, Addicks, Beebe, Brodhead, Broomall, Campbell, Carter, Clark, Corbett, Cuyler, Dallas, Darlington, De France, Elliott, Gilpin, Green, Guthrie, Hay, Hazzard, Heverin, Horton, Knight, Lawrence, Lear, Lilly, MacConnell, McCulloch, McMurray, Mann, Mantor, Minor, Mitchell, Newlin, Niles, Patterson, T. H. B., Patton, Reed, Andrew, Reynolds, Russell, Smith, H. G., Smith, Henry W., Stanton, Struthers, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, David N. and White, Harry—48.

So the Convention refused to adjourn.

ABSENT.—Messrs. Ainey, Alricks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Buckalew, Cassidy, Church, Cochran, Collins, Corson, Craig, Cronmiller, Curry, Davis, Dunning, Edwards, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gowen, Hall, Hemphill, Howard, Hunsicker, Lamberton, Landis, Long, MacVeagh, M'Camant, M'Clean, Metzger, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Furman,

Purviance, John N., Purviance, Saml. A., Read, John R., Rooke, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Turrell, Van Reed, Wherry, White, J. W. F., Woodward, Wright and Meredith, *President*—62.

The PRESIDENT *pro tem.* There is not a quorum of members present.

Mr. HARRY WHITE. I move a call of the House.

Mr. Kaine. I should like to know what a call of the House will effect more than we have just had.

Mr. HARRY WHITE. We have to-day adopted a resolution on that subject. Under rule forty-one, "a majority of the Convention shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day and be authorized to compel the attendance of absent members." We have adopted a new rule this morning which provides that when upon a call of the House it shall be ascertained that less than a quorum is present, thus and so shall be done. Now we want to authorize the Sergeant-at-Arms to bring in the absent members.

Mr. CUYLER. Let me ask if the words of the new rule are not that a minority "may be authorized;" whether that does not require legislation in a full House.

Mr. HARRY WHITE. That has been done.

Mr. CUYLER. No, that is only the adoption of a rule which says it may be authorized.

Mr. HARRY WHITE. I beg the gentleman's pardon. We passed the rule when we had a majority of the Convention present, so that it is a rule of this body.

Mr. BROOMALL and others. I call for the reading of the rule.

Mr. STANTON. By the time we have a call of the House, and the Sergeant-at-Arms goes after members, it will be three o'clock.

The PRESIDENT *pro tem.* The rule will be read.

The CLERK read as follows:

"When upon a call of the House it is found that less than a quorum is present, it shall be the duty of the President to order the doors of the Hall to be closed and direct the Clerk to note the absentees, after which the names of the absentees shall again be called, and those for whose absence no excuse, or an insufficient one, is made, may by order of a majority of the members present be sent for and



taken into custody by the Sergeant-at-Arms or his assistants appointed for the purpose, and brought to the Convention."

Mr. STANTON. I move that we adjourn.

The PRESIDENT *pro tem*. A call of the House has been moved.

Mr. MANN. I rise to a question of order. I do not know of any rule authorizing a call of the House except the forty-first, which says that the roll shall be called at any time upon the demand of any fifteen members.

The PRESIDENT *pro tem*. There was a rule adopted this morning, which has just been read.

Mr. MANN. I understand that that refers to a call. It does not regulate how the call shall be made. The forty-first rule, which I have just read, provides that a call shall be made upon the demand of fifteen members. No fifteen members have demanded it.

The PRESIDENT *pro tem*. Those in favor of a call will rise and remain standing until their names are taken.

Mr. DARLINGTON. The names are not necessary to be taken except on a call for the previous question.

The PRESIDENT *pro tem*. More than fifteen gentlemen rise. A call of the House has been asked for by the gentlemen whose names will be read.

The CLERK read the following names:

Messrs. Harry White, Addicks, Newlin, Green, Hay, Gilpin, Broomall, Cuyler, Guthrie, Knight, J. Price Wetherill, Clark, MacConnell, T. H. B. Patterson, D. N. White and H. W. Smith.

The CLERK thereupon proceeded to call the roll, and the following delegates answered to their names:

Messrs. Achenbach, Addicks, Andrews, Baily, (Perry,) Beebe, Bowman, Brodhead, Broomall, Brown, Campbell, Carter, Clark, Corbett, Curtin, Cuyler, Dallas, Darlington, De France, Dodd, Elliott, Gilpin, Green, Guthrie, Hanna, Harvey, Hay, Hazzard, Heverin, Horton, Kaine, Knight, Lawrence, Lear, Lilly, Littleton, MacConnell, McCulloch, McMurray, Mann, Mantor, Minor, Mitchell, Mott, Newlin, Niles, Patterson, T. H. B. Patton, Reed, Andrew, Reynolds, Ross, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Struthers, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White, Harry and Worrell—62.

The PRESIDENT *pro tem*. There are sixty-two members present. The Clerk will now call the names of the absentees.

Mr. MANN. I move that all further proceedings in this matter be postponed.

The PRESIDENT *pro tem*. We are in the midst of the proceeding, and that cannot be done. The Clerk will call the names of the absentees.

Mr. MANN. I rise to a point of order. In any part of the proceedings under which we are now acting under this rule, a motion to postpone is in order.

The PRESIDENT *pro tem*. The Chair does not entertain the point of order. The Clerk will proceed and call the names of the absentees.

The CLERK called the list of absentees.

The PRESIDENT *pro tem*. The Clerk will take down the names of the absentees.

Mr. LILLY. The names of those who have leave of absence, I suppose will not be taken down.

Mr. HARRY WHITE. I move that the Sergeant-at-Arms be furnished with a list of absentees, be sent for them, take them into custody, and bring them to the Convention.

Mr. NILES. I desire to amend that so as to omit all those who are absent with leave of absence.

Mr. HARRY WHITE. Certainly, I agree to that. I have not had time to write the resolution, but the Clerk can put it in form.

Mr. RUSSELL. If we are going to put this matter through, we shall have to extend the time for adjournment. Three o'clock will be upon us very shortly.

Mr. ADDICKS. We cannot do that. We have not got a quorum.

Mr. LILLY. I rise to a point of order. The resolution presented by the gentleman from Indiana refers to all absent members. Now, we have granted leave of absence this morning to about half the members who are absent now.

Mr. BROOMALL. The resolution has been amended in that respect.

Mr. LILLY. The Clerks inform me that they do not know who has got leave of absence.

The PRESIDENT *pro tem*. It is moved that the Sergeant-at-Arms be furnished with a list of the absentees, with instructions to arrest them and bring them into the Convention to-morrow, at the meeting of the Convention.

Mr. PATTON. I ask to have the resolution on which we are about to vote read.

The CLERK read as follows:

"Resolved, That a list of those members absent, without leave being given, be

made out by the Clerk and given to the Sergeant-at-Arms, and that he and his assistants be sent for them and take them into custody and bring them to the Convention at its meeting to-morrow morning."

Mr. DALLAS. Is an amendment to that resolution in order?

The PRESIDENT *pro tem*. It is.

Mr. DALLAS. I move to amend by striking out all that part which directs the Sergeant-at-Arms to bring the absentees here to-morrow morning, and to insert in lieu thereof, "that this Convention will remain in session until the Sergeant-at-Arms reports."

The PRESIDENT *pro tem*. It is moved to amend the resolution as stated by the delegate from Philadelphia. That motion is before the Convention.

Mr. BROOMALL. I rise to a question of order. It is not in order for less than a quorum to extend the time of session.

The PRESIDENT *pro tem*. The point of order is well taken. The motion cannot be entertained.

Mr. J. M. WETHERILL. I offer the following amendment to the resolution:

"That the Sergeant-at-Arms be authorized to employ whatever number of assistants may be necessary."

The PRESIDENT *pro tem*. The Chair will rule the amendment out of order. The question is on the resolution offered by the gentleman from Indiana (Mr. Harry White.)

Mr. MANN and Mr. WORRELL called for the yeas and nays, and they were ordered.

Mr. CUYLER. Is it proper to offer an amendment?

The PRESIDENT *pro tem*. No, sir; the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted, yeas forty-five, nays sixteen, as follows:

#### YEAS.

Messrs. Achenbach, Addicks, Andrews, Bally, (Perry,) Beebe, Bowman, Brodhead, Broomall, Brown, Campbell, Carter, Clark, Corbett, Cuyler, Dallas, Darlington, Dodd, Elliott, Guthrie, Hanna, Hay, Heverin, Horton, Knight, Lawrence, Littleton, MacConnell, M'Culloch, M'Murray, Mantor, Mitchell, Newlin, Niles, Reed, Andrew, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Struthers, Walker, Wetherill, J. M., Wetherill, John Price, White, David N., White, Harry and Worrell—45.

#### NAYS.

Messrs. Craig, Curtin, Gilpin, Green, Hazzard, Kaine, Lear, Lilly, Mann, Minor, Mott, Patterson, T. H. B., Patton, Reynolds, Ross and Stanton—16.

So the resolution was agreed to.

ABSENT. — Messrs. Ainey, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Buckalew, Carey, Cassidy, Church, Cochran, Collins, Corson, Cronmiller, Curry, Davis, De France, Dunning, Edwards, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gowen, Hall, Harvey, Hemphill, Howard, Hunsicker, Lamberton, Landis, Long, MacVeagh, M'Camant, M'Clean, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Runk, Sharpe, Simpson, Stewart, Temple, Turrell, Van Reed, Wherry, White, J. W. F., Woodward, Wright and Meredith, *President*—71.

Mr. STANTON. I call for the order of the day.

The PRESIDENT *pro tem*. The hour of three o'clock having arrived, the Convention stands adjourned until to-morrow morning at half-past nine o'clock.

# ONE HUNDRED AND THIRD DAY.

TUESDAY, May 20, 1873.

The Convention was called to order at nine o'clock and thirty minutes A. M. by the Chief Clerk, who said:

"The President *pro tem.* is absent; what action will the Convention take?"

Mr. LILLY. I move that Mr. Lawrence be called to the chair.

The motion was agreed to, and Mr. Lawrence took the chair.

The Journal of yesterday was read and approved.

The PRESIDING OFFICER. The gentleman from Erie (Mr. Walker) is now in his seat and will take the chair.

The PRESIDENT *pro tem.* resumed the chair.

## THE CALL OF THE HOUSE.

The PRESIDENT *pro tempore* presented a communication from the Sergeant-at-Arms announcing that he had yesterday afternoon notified the absentees, with a list of whom he had been furnished by the Clerk, a dispatch in the following words: "I am ordered to take into custody absentees and bring them before the Convention to-morrow morning," and that after sending the dispatch Messrs. Wherry and D. W. Patterson had reported in person and that information had been received that other gentlemen included in the list had arrived in the city and would be in attendance this morning.

Mr. CORSON. I move that five hundred copies of that report be printed. [Laughter.]

The PRESIDENT *pro tem.* The communication will lie on the table unless some order be made in regard to it.

Mr. LILLY. For the purpose of facilitating the action of the Convention, I move that further proceedings in the call of the House ordered yesterday be suspended.

The PRESIDENT *pro tem.* The question is on the motion of the delegate from Carbon that all further proceedings under the call of the House ordered yesterday be suspended.

Mr. CURRY. Mr. President: I hope that motion will not prevail. I trust that

every member who was absent when that vote was taken yesterday will be compelled to submit to the will of the Convention on that subject and appear before the bar and receive the censure of the House. I am one of them myself.

Mr. J. W. F. WHITE. Mr. President: I unite in the request of the delegate from Blair (Mr. Curry.) I hope that this Convention will not place quite a number of the members of this Convention in the pillory and leave them there. You now have a record on your Journal of a number of the members of the Convention being guilty of neglect of duty, liable to the censure of the Convention according to the resolution passed a day or two ago. I trust that every person whose name thus appears upon the Journal as neglecting duty will have an opportunity of explaining, and not let that damning record go down upon your Journal without a word of explanation from the absentees who are thus to be blackened in their memories by that record. I would like, for one, to have an opportunity of saying something on that subject, and I hope the motion will not prevail.

Mr. DARLINGTON. I move that each member who feels himself aggrieved be allowed to come to the bar of his own motion, and explain.

Mr. KAINE. There is a motion pending. The gentleman's motion is not in order.

Mr. LITTLETON. My impression is that before it can be carried practically into effect due notice should be given to members. I believe the resolution itself called for that. Therefore it seems to me highly improper to pass this action, this vote of censure, until that notice shall have been given.

Mr. LILLY. The reason I make this motion is to save the time of the Convention. We wasted two hours yesterday because of the neglect of the members in not being here to attend to business and leaving us without a quorum. Now, if we go on in this way and hear each one give an excuse—which I doubt not would be very good in most instances—we shall waste half of this session, and the consequent

is that we shall take a whole day on this matter without any good result.

Mr. HARRY WHITE. I move to amend the resolution of the delegate from Carbon as follows: Strike it all out and insert, "that the Clerk be required to call the names of absentees; those absentees who have come in to have the privilege of explaining if they see fit."

The PRESIDENT *pro tem*. The amendment of the delegate from Indiana is before the committee.

[Several delegates addressed the chair.]

Mr. HARRY WHITE. I have a word to say in connection with that, if you will allow me. I make that motion in deference to the request I have heard falling from the lips of some gentlemen who feel that they have a right. I apprehend it is a right. This Convention certainly does not want to do injustice to anybody. The proceedings inaugurated yesterday were merely in self-defence; and if any gentleman wants to make himself right upon the record, certainly he should have an opportunity of doing so.

Mr. KATNE. I think that everything that was desired has been already accomplished by the proceedings thus far, and the usual manner of disposing of a matter of this kind is by the motion made by the gentleman from Carbon; that is, that all further proceedings in the call be suspended. That will relieve all these gentlemen from any trouble upon that subject; but if there are any gentlemen who desire to make any explanation, of course I have no objection. I do not suppose any of them desire anything of the kind. I hope that the amendment of the gentleman from Indiana will be voted down, and that the motion made by the gentleman from Carbon will prevail, and let us settle the matter and dispose of it at once.

Mr. COCHRAN. As I happen to be one of the members of this body who have been pilloried in this operation, I have only this to say —

Mr. LILLY. I think the gentleman had leave of absence.

Mr. COCHRAN. No, sir, I had not leave of absence. It happened to be, I believe, the first time under peculiar circumstances that I have been away without leave of absence. Now, sir, I hope this Convention will do one of two things: Either carry out this proceeding to the end, or dispense with all further proceedings; it is immaterial which; but as to this matter of a man being allowed to get up

here if he chooses, and make an explanation or withhold it, I hope that will not be done.

Mr. CORSON. Mr. Chairman: The proceedings had yesterday somewhat affect some of us. I did not have leave of absence; but I did not know, when I left here on Friday, that the oldest member of our bar would die on Sunday night, and that there would be a meeting of the bar of Montgomery county in the court house yesterday at noon. That was the reason why my colleagues and myself were detained at home. Daniel H. Mulvaney, who for forty-two years was one of the most eminent lawyers in Eastern Pennsylvania, and an honor to our bar, died on Sunday night, and we held a bar meeting yesterday. That is the reason why I was not here, and I believe it is the first time that I have been absent without leave of absence since the Convention assembled.

Mr. DUNNING. I believe that this question ought to be fairly met by the Convention, and I have not a doubt that the majority of the gentlemen who happened to be absent yesterday are willing to meet it fairly and openly. I do not believe it would be fair that this matter should be suppressed. A few gentlemen were absent yesterday, perhaps, for the first time during our session. Other gentlemen who have urged this matter and thrust it upon the Convention and before the people, may be justified in sitting in their seats yesterday and voting condemnation upon the gentleman who were then absent. Business heretofore has been suspended for want of a quorum, and it has been lightly passed over. It has been suspended in consequence of the absence of gentlemen who have frequently, and in some instances almost continuously, been absent. Now, if there is anything to be done with this proceeding except to carry this resolution through, if, as gentlemen think, the object that was desired has been accomplished, the proper thing would be to expunge it from the Journal, or let other gentlemen who have been derelict in duty and have failed to be present heretofore place themselves in the same position and stand up and take a part of the responsibility. Let them make a confession. There are a number of gentlemen who were absent yesterday for the first time during the session.

Mr. LILLY. The gentleman, I think, was not one of that number.

Mr. J. W. F. WHITE. I believe, sir, we are here under arrest. I believe that is the action of this Convention. If there is any meaning in your record, I stand here, with some other gentlemen, under arrest before this Convention.

The PRESIDENT *pro tem*. We will let you go. [Laughter.]

Mr. J. W. F. WHITE. I do not wish to be let go just in that way. That is why I object to it.

Mr. MANN. You will have a cause of action. [Laughter.]

Mr. J. W. F. WHITE. I wish to show, and I may explain now by showing the injustice of passing this matter over without giving members an opportunity of explanation, and I will refer to my own case simply as an illustration of the injustice of such a rule. I believe, sir, that your Journals here will show that from the time the Convention met at Harrisburg until yesterday at two o'clock, I never was absent from the Convention except three days, when I attended the funeral of Col. Hopkins by appointment of the President of the Convention, and on Friday, the 28th day of March. With those exceptions, I believe you will not find a call of the Convention at any time, or any call of the yeas and nays down to the present time, when my name does not appear among the names of those voting, never once among the absentees or non-voting members.

I came here yesterday morning at the regular time, and waited here over an hour before we could get a quorum to do business. I have not seen the yeas and nays of yesterday; but I will venture this assertion, that there will be found upon the yeas of those voting for this resolution some who were not here for an hour, at least, after the Convention met yesterday morning. You will find on that list of yeas those who have been absent time and again, and weeks at a time, without any excuse or privilege from the Convention. I know, sir, it has not been customary to ask for leave of absence. We all know that the delegate from Indiana, (Mr. Harry White,) who made this motion bringing us up here under arrest, was absent half the winter without leave. The Journals, too, will show that for two weeks, I believe, or very nearly that length of time after we came back in April, he was not here and no leave of absence granted upon the Journal. It was very fitting and proper that he should offer this resolution yesterday afternoon!

I like the fitness of things; I like the appropriateness of things. I was here yesterday until two o'clock. Having an appointment to meet a very dear friend and take dinner at my hotel, I concluded, as you were then in committee of the whole, that in all likelihood you would swing on for an hour longer; but it seems that a short time after that you were without a quorum, and hence this action.

New, for one, I refer to my own case to show the injustice of putting upon the record such a proceeding as you have there, and I trust that it will be the first and last time anything of the kind will be upon our Journal. I hope that to avoid this we shall pass the resolution that was proposed a few days ago making forty a quorum for doing business, and let those who want to run away run and stay away; but do not give the opportunity for putting buncombe resolutions and buncombe votes of this kind upon your Journal.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was rejected.

The PRESIDENT *pro tem*. The question is on the motion of the gentleman from Carbon (Mr. Lilly) to suspend further proceeding under the call.

The motion was agreed to.

The PRESIDENT *pro tem*. The following dispatch has been received by the Sergeant-at-Arms from Mr. Metzger, one of the arrested:

"WILLIAMSPORT, May 20, 1873.

"JAMES ONSLOW:—I am sick and under medical treatment, and cannot possibly come.

JOHN J. METZGER."

#### PETITIONS AND MEMORIALS.

Mr. ANDREWS presented a petition of citizens of Jefferson county, praying for the recognition of Almighty God and the christian religion in the Constitution, which was laid on the table.

Mr. STEWART presented several petitions of citizens of Franklin county of like import, which were laid on the table.

Mr. D. W. PATTERSON presented two petitions, one signed by thirty-eight and the other by forty-four citizens of Lancaster county of like import, which were laid on the table.

Mr. GUTHRIE presented a petition of three hundred and thirty-one citizens of Allegheny county of like import, which was laid on the table.

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

#### LEAVES OF ABSENCE.

Mr. CORSON asked and obtained leave of absence for himself for to-morrow to attend the funeral of the senior member of the Montgomery county bar.

Mr. CUYLER asked and obtained leave of absence for himself for the rest of the week to attend the United States circuit court at Pittsburg.

Mr. PATTON asked and obtained leave of absence for Mr. Turrell for a few days from to-day.

Mr. LILLY asked and obtained leave of absence for Mr. Fell for a few days from to-day, on account of illness.

Mr. TEMPLE asked and obtained leave of absence for himself for a few days from to-day.

Mr. CAMPBELL asked and obtained leave of absence for Mr. Cassidy for a few days from to-day to attend court.

Mr. LEAR asked and obtained leave of absence for himself from half-past two o'clock to three o'clock to-day.

Mr. DALLAS. I ask for leave of absence for a few days from to-day for Mr. Metzger, based on the dispatch received by the Sergeant-at-Arms.

Leave was granted.

#### HOURS OF SESSION.

Mr. WRIGHT. I offer the following resolution:

*Resolved*, That on and after to-morrow the daily sessions of the Convention shall open at nine and a half o'clock A. M. and continue until one o'clock P. M., when a recess shall be taken until three P. M. No session shall be held on Saturdays.

On the question of proceeding to the second reading and consideration of the resolution a division was called, which resulted forty-nine in the affirmative, and thirty-one in the negative. So the resolution was ordered to a second reading; and having been read the second time the Convention proceed to its consideration.

Mr. LILLY. I move that the whole subject be referred to a committee of five to report a permanent resolution. ["No!" "No!"]

Mr. PATTON. The old arrangement was satisfactory to a large majority of members, and I hope this question will not be postponed.

The PRESIDENT *pro tem*. The motion to refer is before the Convention.

Mr. MANN. I move that the whole subject be postponed.

Mr. EDWARDS. I ask for the yeas and nays on that motion.

Mr. MANN. I second the call.

Mr. LAWRENCE. I hope gentlemen will not call for the yeas and nays unless it become necessary. A division may show it to be unnecessary. I hope the call will be withdrawn.

Mr. EDWARDS. No, sir; I insist on the call.

The PRESIDENT *pro tem*. The Clerk will call the yeas and nays.

The question being taken by yeas and nays, resulted:

#### Y E A S.

Messrs. Baker, Bardsley, Bigler, Brodhead, Broomall, Buckalew, Cochran, Corbett, Corson, Craig, Curtin, Dallas, Darlington, Dunning, Gilpin, Guthrie, Harvey, Hay, Hemphill, Horton, Hunsicker, Knight, Lear, Lilly, M'CLean, M'Culloch, Mann, Mantor, Palmer, G. W., Patterson, D. W., Reynolds, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Wetherill, J. M., White, Harry and Woodward—38.

#### N A Y S.

Messrs. Achenbach, Addicks, Andrews, Bailly, (Perry,) Barclay, Beebe, Black, Charles A., Bowman, Brown, Campbell, Carter, Clark, Collins, Cronmiller, Curry, Cuyler, Davis, De France, Dodd, Edwards, Elliott, Gowen, Green, Hanna, Heverin, Kaine, Lawrence, Littleton, MacConnell, M'Murray, Minor, Mitchell, Mott, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Pughe, Rook, Russell, Sharpe, Stanton, Struthers, Temple, Walker, Wetherill, John Price, Wherry, White, David N., White, J. W. F., Worrell and Wright—51.

So the motion to postpone was not agreed to.

ABSENT.—Messrs. Ainey, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Bartholomew, Biddle, Black, J. S., Boyd, Carey, Cassidy, Church, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Hall, Hazzard, Howard, Lamberton, Landis, Long, MacVeagh, M'Camant, Metzger, Niles, Parsons, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Ross, Runk, Simpson, Turrell, Van Reed and Meredith, President—43.

Mr. LILLY. Now I desire to say a word on my motion to refer this subject to a

committee. We have spent a great deal of time here, hour after hour, in discussing the subject of the hours of sitting. I think the subject ought to be referred to an intelligent committee—and I wish to say now that I do not want to be on that committee—who will report a rule to this House that we shall adopt and stand by, and not change every day. Almost every day we are met here with a resolution to change the hour of meeting. I should like to see a report from a committee on this subject and have it fairly understood, and with the understanding that we will stand by it. It will save the time of the House hereafter in altering the hour of meeting. Every week we spend an hour or two on this subject; and that is why I make the motion, to save the time of the Convention.

Mr. DALLAS. If an amendment to the pending resolution is in order, I move as an amendment, to substitute the following: "That in addition to the daily sessions now held, there shall be a session every evening, except Saturday, to commence at half-past seven o'clock."

The PRESIDENT *pro tem*. That is not an amendment to the proposition now pending. The question now is on the motion to refer the resolution to a committee of five.

The motion to refer was not agreed to, there being on a division, ayes thirty-three, less than a majority of a quorum.

Mr. DUNNING. I offer a substitute for the resolution.

Mr. HARRY WHITE. What has become of the amendment of the delegate from Philadelphia (Mr. Dallas?)

Mr. DALLAS. I understand that to be the question now.

The PRESIDENT *pro tem*. That amendment is now in order and will be read.

The CLERK read the amendment, which was to substitute for the resolution the following:

"That in addition to the daily sessions as now held, there shall be a session every evening, except Saturday, to commence at half-past seven o'clock."

Mr. HARRY WHITE. Say "except Friday and Saturday."

["No. No."]

Mr. DALLAS. As there seems to be a difference of opinion whether Friday should also be omitted, I suggest to the gentleman to offer that as an amendment instead of my accepting it, and when he offers it as an amendment we can vote on it.

Mr. HARRY WHITE. I will not offer it as an amendment.

Mr. KNIGHT. I move to amend the amendment of my colleague from Philadelphia so as to make it read:

"That in addition to the daily sessions as now held, there shall be a session on Tuesday, Wednesday and Thursday evenings, commencing at seven and a half o'clock."

Mr. CAMPBELL. If that amendment prevails, then we shall have to remain in session daily during the present hours, and we cannot have an afternoon session, as members will not attend more than two sessions a day. If we vote down the amendment, it will give those of us who wish to have two sessions a day, from half-past nine to one and from three to six, an opportunity to vote upon that. Therefore I hope all those in favor of two sessions a day will vote against this amendment,

Mr. MACCONNELL. It seems to me that we waste a great deal of time on this subject. Hardly a day transpires but we have this question brought before us, and some new order made or the subject postponed. Would it not be advisable for us to agree upon some plan that will settle the matter and get it out of our way? I would suggest, and if it is in order I would move—

The PRESIDENT *pro tem*. There is an amendment to an amendment pending.

Mr. MACCONNELL. I will suggest, however, that the whole subject be referred to the Committee on Rules, with a view to frame a rule on the subject that may be a standing rule of the House, so that we shall not be troubled with this subject from day to day, as we have been heretofore.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment, offered by the gentleman from Philadelphia (Mr. Knight.)

Mr. WRIGHT. As I offered the original resolution, I should like to say one word. We worked here for more than a month with perfect harmony and success. We met in the morning at ten o'clock and adjourned at one; we met at three and sat until six, and the Convention was not troubled with any motions to change the time.

Mr. LILLY. I should like to ask the gentleman a question if he will allow me.

Mr. WRIGHT. No, sir, I shall not allow you a word just now.

I hope therefore that we shall recur to the original plan of doing our work. All the trouble that occurred here yesterday afternoon was owing to the fact that we were obliged to sit here until three o'clock. I confess I could not stand it. I am accustomed to have my dinner at one o'clock. I have attended this Convention as punctually as any other man here, unless it be my brother Cochran; I have been here every day; but I cannot stay here from nine o'clock until three. I suppose I was embraced in the censure involved in the resolution of yesterday, but I could not avoid it. I believe we cannot hold a night session during the hot weather. With this room lighted up with gas and the thermometer at sixty or seventy it is utterly impossible. We can do the work of this Convention by meeting here at nine and a-half o'clock and adjourning at one, when every respectable man ought to be at dinner, [laughter,] and then coming here at three and staying during the pleasure of the Convention. I hope that the amendment will not prevail, but that we shall take a vote on the original resolution and go on with our business.

MR. LILLY. The question I desired to ask of the gentleman from Luzerne was this, but he would not allow me, and I will put it now: How many members he could count asleep in the afternoon between three and five o'clock?

MR. WRIGHT. I never saw any member asleep unless it was the gentleman from Carbon. [Laughter.]

MR. LILLY. It is suggested by one of the gentleman's colleagues on my right that he could not see anybody asleep, because he was asleep himself.

MR. DALLAS. As the mover of this amendment, I desire to say a single word in reply to the gentleman from Luzerne. We have now a long session from half-past nine until three o'clock. We lose every morning at the outset a certain length of time in getting started. There is certain time lost in beginning and concluding every session of the Convention; and we proceed, in my view, much more rapidly by one long session than by two short ones, so that that lost time is doubled every day. In the amendment I have offered, I have not tried to accommodate the stomach of every delegate. That organ is somewhat different in different constitutions. I am myself an early diner, and it would suit me personally better to arrange the time as the gentleman proposes; but in endeavoring to ar-

range the hours of meeting to suit the business we have in hand, it seemed to me better that we should have one long session in the day, and then in the evening economize the time of the delegates by having a session of three or four hours, if necessary, to hurry up the work we have to do.

THE PRESIDENT *pro tempore*. The question is on the amendment of the delegate from Philadelphia (Mr. Knight) to the amendment of his colleague (Mr. Dallas.)

MR. COCHRAN. I hope, sir, that the Convention will not agree to hold night sessions. I have never known night sessions in any deliberative bodies to be conducted with decorum or to facilitate the dispatch of business. I think that when we have sat here from nine o'clock until three, we have done a fair day's work, and we have done as much as the human constitution ought to be called upon to endure, especially in the season which is now approaching. I hope then that we shall either abide by the rule which we have tried but one day and have no reason, from the operation of one day, to condemn, or that we shall return to our former rule of morning and afternoon sessions. To me it is indifferent which is done; but I must protest against the holding of a night session.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Knight) to the amendment of his colleague (Mr. Dallas.)

The amendment to the amendment was rejected.

THE PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Philadelphia (Mr. Dallas.)

The amendment was rejected.

THE PRESIDENT *pro tem*. The question recurs on the resolution.

MR. DUNNING. Now, Mr. President, I offer the following substitute for the resolution:

That hereafter sessions will be held on Saturday from nine and a-half to one o'clock, and on Mondays, from three o'clock to six o'clock; the sessions of the other days of the week to be as now provided.

THE PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Luzerne, (Mr. Dunning.)

The amendment was rejected.

THE PRESIDENT *pro tem*. The question recurs on the original resolution.



Mr. MACCONNELL. Mr. President: I move that this whole subject be referred to the Committee on Rules, with instructions to report a standing rule on the subject. ("No," "No.")

The PRESIDENT. Does the delegate make such a motion.

Mr. MACCONNELL. I make that motion.

The PRESIDENT *pro tem*. It is moved to refer the resolution to the Committee on Rules.

On this motion, the yeas and nays were required by Mr. Temple and Mr. Brodhead, and were as follow, viz:

Y E A S.

Messrs. Baker, Barclay, Bartholomew, Bigler, Bowman, Brodhead, Broomall, Brown, Carey Clark, Corbett, Corson, Curtin, Cuyler, Dallas, Dunning, Edwards, Gilpin, Gowen, Guthrie, Harvey, Hay, Hemphill, Horton, Hunsicker, Knight, Lear, Lilly, Long, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mitchell, Palmer, G. W., Palmer, H. W., Reynolds, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, Harry and Woodward—47.

N A Y S.

Messrs. Achenbach, Addicks, Andrews, Bailly, (Perry,) Bardsley, Beebe, Black, Charles A., Buckalew, Campbell, Carter, Cochran, Collins, Craig, Cronmiller, Curry, Darlington, Davis, De France, Dodd, Elliott, Green, Hanna, Heverin, Kaine, Lawrence, Littleton, Mantor, Minor, Mott, Patterson, D. W., Patterson, T. H. E., Patton, Porter, Pughe, Rooke, Ross, Russell, Sharpe, Stanton, Struthers, Temple, Wherry, White, David N., White, J. W. F. and Wright—45.

So the motion to refer was agreed to.

ABSENT.—Messrs. Ainey, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Biddle, Black, J. S., Boyd, Cassidy, Church, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Hall, Hazzard, Howard, Lamberton, Landis, MacVeagh, M'Camant, Metzger, Newlin, Niles Parsons, Purman, Purvance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Runk, Simpson, Turrell, Van Read, Worrell and Meredith, *President*—40.

PAY OF OFFICERS.

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

*Resolved*, That the special committee appointed to report pay for the members of the Convention be directed to consider and report the compensation and pay of the Clerks and other officers of the Convention.

THE QUORUM.

Mr. DARLINGTON. Mr. President: I move that the Convention proceed to the second reading and consideration of the resolution I offered yesterday relative to a change of the forty-first rule.

Mr. DALLAS. Let the resolution be read for information.

The CLERK read the resolution as follows:

*Resolved*, That rule forty-one be amended by striking out the words "a majority of" in the third line, and inserting the words "forty members" in lieu thereof.

On the motion to proceed to the second reading and consideration of this resolution, a division was called, which resulted forty-seven in the affirmative and thirty-eight in the negative. So the resolution was ordered to a second reading. It was read the second time and considered.

Mr. LILLY. I move to amend by striking out forty and insert fifty.

Mr. HARRY WHITE. I second that motion.

Mr. DARLINGTON. Say forty-five.

Mr. LILLY. No! If we make it fifty we shall probably keep a full quorum here. If we change the present number necessary for a quorum, let us have it high enough to compel members to attend and not reduce it so low that nobody will feel called upon to be here.

The amendment was agreed to.

Mr. HARRY WHITE. I call attention to the fact that it requires two-thirds to change a rule.

Mr. C. A. BLACK. We know that.

Mr. CUYLER. I simply desire to say that I very gravely doubt whether this body has a right to fix a quorum less than a majority of its members. I do not know where the power is derived from. Certainly it is not conferred by the act of Assembly which called the Convention together.

The PRESIDENT *pro tem*. The question is on agreeing to the resolution as amended.

The yeas and nays were required by Mr. Cochran and Mr. D. W. Patterson, and were as follow, viz:

Y E A S.

Messrs. Achenbach, Baker, Barclay, Bardsley, Bartholomew, Bowman, Brod-

head, Broomall, Brown, Buckalew, Carey, Carter, Clark, Collins, Corson, Craig, Cronmiller, Dallas, Darlington, Davis, De France, Dunning, Gilpin, Gowen, Hanna, Hemphill, Horton, Lear, Lilly, Littleton, MacConnell, Mann, Mitchell, Mott, Patterson, T. H. B., Patton, Pughe, Reynolds, Ross, Russell, Smith, Henry W., Walker, Wetherill, Jno. Price, White, David N., White, Harry and White, J. W. F.—46.

#### NA Y S.

Messrs. Addicks, Andrews, Baily, (Perry,) Beebe, Bigler, Black, Charles A., Campbell, Cochran, Corbett, Curry, Curtin, Cuyler, Dodd, Edwards, Elliott, Guthrie, Harvey, Hall, Heverin, Hunsicker, Kaine, Knight, Lawrence, Long, M'Clean, M'Calloch, M'Murray, Mantor, Minor, Palmer, G. W., Palmer, H. W., Patterson, D. W., Porter, Read, John R., Rooke, Sharpe, Smith, H. G., Smith, Wm. H., Stanton, Stewart, Struthers, Temple, Wetherill, J. M., Wherry, Woodward and Wright—46.

So the resolution as amended was rejected.

ABSENT.—Messrs. Ainey, Alricks, Armstrong, Bear, Bailey, (Huntingdon,) Bannan, Biddle, Black, J. S., Boyd, Cassidy, Church, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Green, Hall, Hazard, Howard, Lamberton, Landis, MacVeagh, M'Camant, Metzger, Newlin, Niles, Parsons, Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Runk, Simpson, Turrell, Van Reed, Worell and Meredith, *President*—40.

#### PRIVATE CORPORATIONS.

MR. LILLY. I move that we go into committee of the whole to proceed with the further consideration of article No. 21, reported by the Committee on Private Corporations.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Stanton in the chair.

THE CHAIRMAN. The committee of the whole rose yesterday on the report of the Committee on Private Corporations. The question is on section eleven. The secretary will be kind enough to read it.

THE CLERK read as follows:

SECTION 11. In all elections for the managing officers of a corporation, each member or shareholder shall have as many votes as he has shares, multiplied by the number of officers to be elected,

and he may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

MR. BUCKALEW. Mr. Chairman: I was absent yesterday when this section was under consideration. I desire now to refer the committee to certain information which I have lying before me upon this particular subject.

This amendment, or rather this proposition, in regard to stock-holders elections of directors and managers of incorporated companies, is found in the Constitution of Illinois, adopted in July, 1870; and also in the Constitution of West Virginia, which was adopted early the present year. Gentlemen will find in the debates of the Illinois Convention at page 1666 the debate which took place in the Convention of that State upon this subject. It was, although brief, a very interesting and a very instructive one, and it will become gentlemen of the Convention to refer to it if they have any doubts with regard to the character or operation of this proposed amendment. The debate there, so far as I can see, covered every important consideration connected with this subject, and it was so clearly in favor of the proposition that eventually the gentleman who had moved to strike it out withdrew his motion and the proposition was adopted unanimously by the Convention. It was afterward adopted along with the general amendments subsequently submitted by a majority of ninety-eight thousand seven hundred and eighty-four in that State.

In the case of West Virginia it was again considered fully by that Convention and was adopted without serious opposition; so that it is now the fundamental law of the two States who have recently adopted new Constitutions or amendments to their Constitutions. It will become us, in my opinion, to follow these examples.

I beg leave to read a few words from the remarks of one of the members of the Illinois Convention. Mr. Haines, of Lake, said:

"Corporations of the kind referred to, as I understand it, are merely co-partnerships; merely contributions of individuals for the purpose of carrying on individual enterprises. \* \* I want to place them for all purposes, so far as I can, in the light of individuals transacting business, and give them no powers beyond what individuals possess, unless absolutely necessary for their existence as corporations.

"If three or five persons engage in business as co-partners, each partner has a voice in conducting its business, and is entitled, in person, anywhere and everywhere, to give his voice in the direction of its affairs. This is a right existing by law everywhere. But when a company is created by an act of incorporation, the rule seems to have been changed. The rule sought ought to have been the same from the beginning. We ought not to countenance the principle that these incorporated companies are public corporations, but confine them to the condition intended.

"An incorporated company has a board of directors, which may sit in private, and pass a rule that nobody else shall be admitted because nobody is concerned. The business has been given to this board. No stockholder has a right to be present unless the rule allows. The very presence of a man in the board representing one-fifth of the interest of the corporation, might suggest something to the balance of the board for the benefit of those they represent. But the principle that the majority of the stock shall govern and control the financial interest of the corporation, is to disfranchise the minority."

I have read this passage for the purpose of presenting this one of the many points which were amply considered in Illinois, and that is, the similarity to a great extent, of these incorporated companies with partnerships, and the reasonableness, in fact the necessity, of applying to them the same principle that ordinarily applies to partnership transactions in carrying on business affairs; and that is, that each partner who has a pecuniary interest in the concerns of his partnership is to have a voice in its affairs. In fact, in partnership organizations it may be provided, and it often is, that a partner shall have a vote in determining the business of the partnership proportionate to the interest which he holds in it. Partnerships organized on this principle would be exactly like the incorporated companies organized under the amendment proposed by the committee.

This question as applied to corporate elections does not raise those considerations which apply to political elections. The question is very different. It is one of interest in two points of view: First, as regards the protection of the interests of the stockholders themselves. This provision will enable every man or every combination of men of respectable magnitude as to stock interests in a corporation

to protect the interests which they hold in it by appointing one or more directors to look after the practical management and administration of its affairs; and this is a necessary guard and protection to property interests which are embarked in our numerous corporate enterprises in this State.

Then, again, this provision is important to the public. These corporations have become very numerous. They are organized for carrying on a great variety of employments and business in our State; in fact, a large part of the disposable capital of the State is embarked in corporate companies of some sort, and their management and administration, therefore, becomes a question of immense magnitude and consequence in our State. It is to the interest of the public, it is to the interest of the people in common that these corporations should be conducted upon sound principles, and with every guard which can be provided by the government against abuse. If there are combinations or rings, as they are termed, formed within these corporations, which direct their conduct and management, the inevitable result is that the public in general are injured; that favoritism is exercised towards certain persons, while the great mass of the community indirectly are plundered or injured. It is to the interest of the public that principles of sound morality, as well as sound business principles, should prevail in the management of these incorporated companies, and there is no means by which you can provide against abuse in their management and administration, except by providing that all the stockholders who are interested in their management shall be enabled to participate practically in their government.

Another consideration in this same connection is this: Abuses in corporate management are mainly secret, at least in the commencement, a fact alluded to by Mr. Haines, in the Illinois Convention. A secret arrangement, a private contract or understanding, by which the affairs of the corporation are managed directly to the interest of an individual or of a combination of individuals, is almost always secret. The great mass of the stockholders at the time the arrangement is made know nothing about it. If in some months, or, possibly, years afterwards the facts come to be known, it is too late to apply a remedy. Stockholders who may be plundered or injured cannot appeal to

the courts for redress, because it is too late. The transaction has passed into the history of the company, and it cannot be undone. You cannot go back to the point of time when the abuse was proposed and apply your check, your protection to the stockholders who are liable to be injured. The only mode then by which the stockholders themselves and by which the public can be protected against abuse in the management of these incorporated companies is, that all the stockholders shall be able to know all the time what is going on in the management of the company, and if anything wrong is proposed, that they may call the attention of the stockholders generally to it, or appeal to a court for an injunction, and thus check the abuse before it takes an irremediable form.

In this point of view, Mr. Chairman, this amendment will be one of the most salutary checks which can be introduced into the Constitution of our State. All over the State, from one of the great railroad companies down to an humble gas or water company in a town, all the proceedings of these incorporated companies should be open to the inspection and knowledge of all the corporators interested in them, and then their management will receive a guarantee and a protection that can be obtained in no other manner whatever.

Mr. LEAR. I will propose an amendment to this section. I am in favor of the principle of it, but I think the language of it is not calculated to forward the ideas contemplated by the committee. There is scarcely an incorporated company in the State that allows its stockholders a vote for every share.

Mr. DARLINGTON. Oh, yes.

Mr. LEAR. Very few of them. The State banks do not. They vote her share up to a certain number of shares, and then they have one vote for so many shares.

Mr. DARLINGTON. The great majority is the other way.

Mr. KAINÉ. Will the gentleman from Bucks allow himself to be interrupted?

Mr. LEAR. Certainly.

Mr. KAINÉ. The state of affairs mentioned by the gentleman from Bucks as to banks is as represented by him under the general banking law of the State, but in no other institution that I know of; and there are no banks in existence, I believe, under that law.

Mr. LEAR. But it is a general principle that the votes diminish as the shares of stock increase in number; and that is for the protection of the small shareholders, and it is a very proper protection. The proposition I offer is to amend by striking out in the second line all after the word "shareholder," and in the third line all preceding the word "may," and then the section will read:

"In all elections for the managing officers of a corporation, each member or stockholder may cast the whole number of his votes for one candidate or distribute them upon two or more candidates, as he may prefer."

Striking out the words: "Shall have as many votes as he has shares, multiplied by the number of officers to be elected, and he."

It then allows the shareholder to have as many votes as he has by the particular act of incorporation in any company for all the managing officers to be elected, cumulating them on one or more as he sees proper; and it strikes out that part of the section which provides for his having the power to cast as many votes as he has shares, multiplied by the number of officers to be elected. Suppose a company having one hundred shares of stock and having ten directors to be elected, and one member has twenty-five shares out of one hundred; he has the right to cast a vote of two hundred and fifty for a single member, and it seems to me, it is doing just that which the Committee on Corporations and the gentleman from Columbia (Mr. Buckalew) did not intend to do. It is giving a very large power to persons who hold a large quantity of stock, it is giving them an increased power in a geometrical ratio over those who have small shares, and it is calculated to entirely "freeze out"—to use an expression often used in companies of the kind—those who have small shares. For the purpose of protecting them, I propose to strike out these words which give a right to a vote in all companies for as many directors as there are to be elected, and give the shareholder as many votes for one director or more as he has a right to cast for the whole of them.

Mr. DARLINGTON. Mr. Chairman: I am opposed to anything in the Constitution on this subject. The Legislature are competent to prescribe for each corporation they may create the manner in which the stockholders or shareholders shall elect their officers. There has never been

found any difficulty on this subject in the past history of the State, and I do not apprehend any will be found in the future. It varies somewhat; but perhaps a very large majority—I do not know whether I am speaking accurately now, or not—perhaps a large majority of all the private corporations of the State elect their officers and managers by the system referred to by the gentleman from Bucks.

Mr. Kaine. I rise to a question of order. The gentleman is not addressing the Chair from his seat.

The Chairman. The point of order is well taken.

Mr. Darlington. If the gentleman prefers that, I will speak from my seat, and I will take care that other gentlemen do the same. Now, Mr. Chairman, I do not see that anything will be gained to the Convention; certainly nothing gained to me, and no inconvenience imposed upon me by requiring me to speak from my seat. If it is the pleasure of any gentleman to do so, I recognize it as a right. Mr. Chairman, I propose to say to this committee in a manner that shall be heard, if they will be inclined to listen to me, from whatever portion of the House they may prefer that I shall speak, what I choose to say in debate on this question.

As I was about to say, the great majority of the private corporations in this State are governed, no doubt, by the rule referred to by the gentleman from Bucks. It is not, however, universal. There are many corporations in which each stockholder has a vote for every share he holds in the corporation. Whether one or the other mode should be preferred by the members and owners of the corporation, the Legislature have generally been willing to accord it to them. No difficulty is experienced in having a corporation organized, as the parties asking its incorporation prefer. I know that of late times it has been recognized as the soundest and the best course to allow a man to vote and to be represented in the stock according to his interest in the concern, every share being entitled to a vote. I think I may say with safety that that is the modern notion generally adopted by the Legislature in regard to all private corporations, wherever it is asked.

But, be that as it may, what possible good can arise from making it a constitutional provision that no private corporation shall ever be created for any purpose except upon this cumulative plan of voting? Where has the public voice been

heard anywhere in this State in favor of such a project? Half a dozen individuals, or twenty, if you please, in any improved and improving town within our borders, who may choose to associate their capital for the purpose of introducing water or gas for the comfort of the inhabitants and the improvement of the town, are not, under such a provision as this, at liberty to associate except upon this cumulative plan of voting for officers.

Wherefore is it that private enterprise for a public object may not be allowed to associate and conduct their business so long as the public are not affected by it, in whatever mode they may choose to elect their officers?

The argument of the gentleman from Columbia, (Mr. Buckalew,) that this plan will protect the public does not strike me with any force. The public take care to guard themselves by proper limitations upon the powers of the corporation, and the law affords the remedy if they violated their character by *quo warranto*; by *scire facias*; to repeal the charter by that provision in your Constitution, which, without application to the courts at all, authorizes the Legislature to repeal any charter of a corporation whenever they are satisfied that it is against the public interest. The public are sufficiently protected because they have the entire control in their own hands. There is no need for it, therefore, on that account.

Whom, then, are you protecting by adopting a principle like this? "The minority," it is said; and there lies the secret. It is again an attempt to place in the Constitution of your State a principle that the minority shall govern, and by cumulating their votes to have the power of a majority. It is more objectionable, if that be possible, than that principle when applied to the political government of the State, because it attempts to deal with the private property and private enterprise of individuals in a manner unknown heretofore to the Constitution, unknown to the history of the world, an innovation, an improvement as is suggested, the value of which remains yet to be tested, even although they may have adopted it in Illinois and changed the fundamental principle which lies at the root of our government, and which ought to lie at the root of the government of every corporation by refusing to a majority, those most interested in the management and well-being of the corporation, the right to control its movements.

I do not know that I can make myself any more clearly understood than I have done, and, therefore, I do not propose to add anything to what I have said on this subject. I am opposed to the principle as applicable to private interests as well as to the government as a heresy in legislation and a worse heresy when put in the fundamental law.

The CHAIRMAN. The question is on the amendment of the delegate from Bucks (Mr. Lear.)

The amendment to the amendment was rejected; less than a quorum voting in the affirmative.

Mr. CUYLER. Mr. Chairman: I said what I desired to say yesterday with regard to this section and wish now only to add a word or two after what has fallen from the gentleman from Columbia (Mr. Buckalew.) I fail myself to discover one single valuable practical thought in this section. I see in it nothing of good.

The CHAIRMAN. The Chair will remind the gentleman from Philadelphia that having spoken once on this section he is debarred that privilege unless it be the pleasure of the Convention that he shall proceed.

Mr. DALLAS. I move that he have leave to proceed.

Mr. CUYLER. I do not ask it.

The CHAIRMAN. The question is on the section.

The section was agreed to; there being on a division, ayes thirty-six, noes thirty-two.

The CHAIRMAN. Section twelve will be read.

The CLERK read as follows:

SECTION 12. No corporations, except for the construction of railroads, canals and other public highways, or for charitable, literary, scientific or religious purposes, shall be created for a longer period than twenty years.

Mr. LILLY. I think, Mr. Chairman, that some parts of this section are very objectionable and should not be adopted. I do not know that the whole section should be voted down, but where it says that no corporations except for the construction of railroads, canals and other public highways shall have their charters extended for a longer time than twenty years, I think that the Convention should hesitate before it adopts any such provision. We have hundreds of corporations in Pennsylvania who have expended their money in such manner that it would be utterly impossible for them to make a settlement

of their affairs at the end of twenty years, and they would inevitably be forced into liquidation, unless they were allowed an extension of their charters.

I have in my mind's eye, at this time, the case of one corporation to which I will refer. The Bethlehem iron company, of Bethlehem, has piled up in the shape of stone, iron, brick, &c., in furnaces and rolling mills and like property, probably a million and a half of dollars. Why should that company be called upon at the end of twenty years to go into court and ask for a new charter? There might be parties interested in preventing the extension of their charter who would force them into litigation and give them, perhaps, endless trouble; whereas, under the perpetual charter they could go on and transact business the same as they do now.

I look upon such corporations as these large manufacturing companies as being as permanent as railroads or canals, and I think that this Convention should so consider them. Their money is invested in fixed improvements in the erection of buildings and in the construction of valuable works which are only remunerative to them as long as their charters exist. Why should any such arbitrary provision as this compel them at the end of twenty years to find all these improvements valueless upon their hands, and force them either to sell their property to others or organize a new company to carry on their business if they failed in securing an extension of their charters? It might be perfectly easy for banks, insurance companies and corporations of that kind, to go into liquidation without incurring serious loss, although even in those cases the termination of their charters at the end of twenty years would subject them to difficulty and, perhaps, to great injustice. Still I would not so particularly object to the provisions of this section if it only applied to moneyed institutions; but as it is, applying to manufacturing companies, I think it is entirely too sweeping, and I hope that this Convention will at least vote down this part of the section.

I do not think that it is necessary for me to go on and elaborate this section further. I take it for granted that every sensible man within the sound of my voice will certainly see this subject from the same standpoint that I do. If the section were adopted all sorts of manufacturing enterprises would be very much crippled. It would compel them all to

go into court at the expiration of twenty years and ask for a new charter, and this might be attended with a great deal of inconvenience. Therefore I hope that the section will either be voted down or so amended as to exclude from its operations corporations such as I have referred to.

Mr. CAREY. Mr. Chairman: At the last session of the Legislature that body came very near recognizing the right of all men to associate together and do business with one another and with the world, on such terms as might be most agreeable to them, whether of limited or unlimited liability, and to continue doing so for any length of time that they would prefer. That was a step toward freedom. The next step would be to declare the absolute right of all people to associate, as they now do in all the New England States, as they do in the State of New York, as they do in the State of Ohio, for ten, fifty, or one hundred years if you like, and to determine, under proper regulations, what the terms on which they shall trade will be. In England this has been carried, as I said yesterday, to as near perfection as possible. The right is there fairly recognized. Any amendment in that direction is a movement in the direction of civilization. This section, I think, is a relic of barbarism: it is going back instead of going forward, and I do most earnestly trust that it may be voted down.

The CHAIRMAN. The question is upon the section.

The section was rejected.

The CHAIRMAN. The thirteenth section will be read.

The CLERK read as follows:

SECTION 13. No foreign corporation shall hold any real estate in this State; and no such corporation shall do any business in any city or county of the State without having a known place of business in such city or county and an authorized agent upon whom process may be served,

Mr. BRODHEAD. In my opinion this section is, as Mr. Carey has just said of the preceding one, a relic of barbarism. The idea that the citizens of other States or a foreign corporation shall not come into this Commonwealth and spend their money in the development of the resources of Pennsylvania, is certainly a step backward, and I therefore move to amend by striking out all after the word "shall," where it first occurs, down to and including the word "shall" where it occurs the second time.

Mr. MACCONNELL. Mr. Chairman: I hope that this amendment will prevail. I think as the section is reported it would certainly be unwise to adopt it. Its effect upon the manufacturing companies of the State which are owned by foreign capitalists, would be extremely disastrous. We have in Allegheny county a corporation incorporated under the laws of Massachusetts. That corporation, under an act of Assembly passed many years ago, purchased a very valuable piece of ground at McKeesport, on the Monongahela river, opposite the mouth of the Youghiougheny river, and erected a very extensive series of tube works, for the manufacture of iron tubes. They employ several hundred hands in the carrying on of their business. Yet if you adopt this section as reported from the Committee on Private Corporations, it seems to me it would threaten the whole of this property. I consider it unsafe to put any such provision into our Constitution. There are large numbers of corporations in the oil regions in which the capital invested is supplied from foreign sources. There are railroads within the Commonwealth, incorporated by the Legislature of the Commonwealth, at whom this section strikes a severe blow. I hope the amendment will prevail.

Mr. CAREY. We have been urged to abolish the usury laws on the ground that they had a tendency to drive capital from the State. Now we are asked to so provide as to prevent capital from coming into the State. This section simply provides that we will not allow foreigners to come here and buy our land. I most earnestly trust that the amendment will prevail.

Mr. BIGLER. I unite with that expression. I live in a section of the State which needs capital very much. We should be a very prosperous people in that section if the great resources of that country could be developed, if we could induce foreign capital—and I mean by that capital from other States—to come in there and purchase largely of that wild country and develop its resources. I sincerely hope the amendment of the delegate from Northampton will be adopted.

Mr. T. H. B. PATTERSON. I ask that the amendment be read.

The CLERK. The amendment is to strike out the words, "shall hold any real estate in this State, and no such corporation."

Mr. T. H. B. PATTERSON. How will the section then read?

The CLERK read as follows:

"No foreign corporation shall do any business in any city or county in the State without having a known place of business in such city or county and an authorized agent upon whom process may be served.

The amendment was agreed to.

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

Mr. MINOR. It seems to me, sir, that the amendment has been properly carried and that now the rest of the section should be voted down. There is nothing in it excepting a regulation that foreign corporations shall have an agent in the State upon whom proper notice shall be served; and all that matter should be regulated by the Legislature.

Mr. KAINE. It is now.

Mr. MINOR. There is no need of the residue of this section.

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

The section was agreed to, there being on a division ayes forty, noes twenty-two.

The CHAIRMAN. The Clerk will read the fourteenth section.

The CLERK read as follows:

SECTION 14. No corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate except what may be necessary and proper for its legitimate business.

Mr. CORBETT. I hope that this will be voted down. I think that is the law of the land without either a constitutional provision or any legislative enactment.

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

"And the Legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages made by viewers or otherwise; and the final determination of the amount of such damages shall in all such cases of appeal be determined by a jury."

I desire to say just one word on this amendment. It is for the purpose of giving to a party whose property has been taken by a corporation for legitimate purposes, and damages have been assessed by viewers, a right of appeal from that assessment. I understand that the Pennsylvania railroad company have an act of Assembly which makes the assessment of damages by viewers final and conclusive

as between the parties, without any right of appeal. It strikes me that this is a deprivation of the guaranteed right of every man to have a question of property determined by a jury of his countrymen. In all cases the party should have the right of appeal, and the determination of the amount of damages should stand to be fixed by a jury of the country.

Mr. BIGLER. I do not see that the amendment of the gentleman from Schuylkill has any relevancy at the end of this section. He can well offer his proposition as an independent section; but I do not see how it can come in as an amendment to the section which is now before the committee of the whole. I suggest to him therefore to allow the section to be first disposed of.

Mr. BARTHOLOMEW. The gentleman from Clearfield if he will look at this section will see that it is susceptible of this amendment. The section reads, "No corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate except what may be necessary and proper for its legitimate business." Now, I provide by this amendment that when any corporation does take such property for its legitimate business as it is entitled to take, it shall not take it and fix the damages by a verdict of viewers, without the right of appeal to a court and jury to determine finally the amount that is due.

Mr. LILLY. I think the section ought to be made in one respect more specific. I think that corporations should be allowed to take property in payment of debts. For instance, an iron company selling one hundred thousand tons of iron ought certainly to be allowed to get judgment and levy on real estate and sell it in order to pay the debts that may honestly be due it. It might be stipulated that such a company should be allowed to hold the real estate only so long as is necessary to make a transfer of it; but that much at least is certainly necessary. It appears to me that they should not be cut off from the opportunity of doing that.

Mr. WOODWARD. That is not affected.

Mr. LILLY. If the construction which the gentleman from Philadelphia puts on it is correct, I have no objection.

Mr. WOODWARD. All corporations who buy in real estate to satisfy debts honestly contracted, are permitted to hold it, although their charters forbid them to hold real estate except for their legitimate business. It is legitimate business



to secure their debts; and the buying in of real estate may be necessary for that purpose. There can be no doubt, I think, as to the construction. I never heard a doubt suggested before.

Mr. CORBETT. I hope that this amendment will not be adopted as a part of this section, because it is not germane to it. The article reported by the Committee on Railroads and Canals, and passed through the committee of the whole, has a section with reference to the assessment of damages. If this was moved there, I should probably vote for it, and I do not know but that the amendment itself has merit in it; but certainly it is not germane to this section and ought not to come in here.

The amendment was agreed to.

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

The section as amended was agreed to, there being on a division ayes fifty-two; noes not counted.

The CHAIRMAN. The fifteenth section will be read.

The CLERK read as follows:

SECTION 15. The franchise, the rolling stock, and movable property of all corporations shall be deemed personal property, and shall be liable as such to execution and sale for their debts.

Mr. CUYLER. Mr. Chairman: What is to become of corporations under the operation of such a section? I suppose there is no transporting corporation in the State that has not a mortgage, some of them two or three mortgages; and the mortgage covers all that is necessary to execute the franchise of the company, covers not only its road bed but covers its rolling stock, covers the very fuel provided for its engines, covers the very oil, everything that is necessary for the execution of the franchise. How are we to take away from those who hold bonds under these mortgages the property that is thus pledged to them? By what possibility can this Convention do it? Of what use will the railroad be after it is stripped of all that makes it valuable as a railroad?

It is for reasons like these that our courts have held that you cannot reach the rolling stock, the fuel, and that which is necessary to execute the franchise of a transporting corporation under the ordinary process of the law. You may sequestrate, you may seize the property and operate it for the benefit of the creditor, but you cannot take away from that prop-

erty all that makes it valuable as property. If you do that you put an end to everything that induces men to loan the money which is to enable these works to be constructed.

A section like this is simply revolutionary and operates as a perfect destruction to every transporting corporation. I hope it will not prevail.

Mr. COCHRAN. Mr. Chairman: It is very evident that where there has been a contract executed and the rolling stock and other property of a corporation has passed under that contract and is pledged, it is not in the power of this Convention, as I apprehend, to interfere with it; but that is no reason, it appears to me, why we should not establish a good general principle and let it apply in all cases where it is applicable under the law and the Constitution of the State. If there are certain corporations that have so covered up their property as that their outside creditors cannot touch it, I suppose we must submit to it, if they had legal authority to do so; but where there are corporations that have not yet done that and where there is an opportunity of getting at their property in order to compel them to pay their honest debts, it appears to me that it is no reason in the world why creditors should not have the same right against their personal property as they have against the personal property of individuals.

Mr. CAMPBELL. Mr. Chairman: I think we ought to pass this section. The very statement made by my colleague from Philadelphia, (Mr. Cuyler,) that you cannot, under our present law, reach the rolling stock of a corporation for ordinary debts, is a sufficient reason for the adoption of the section. I do not see why we should make any distinction between corporations and private individuals as to the property that they respectively own. If either a corporation or an individual incurs an honest debt, all the property that it or he owns should be alike subject to execution and sale for that debt. We should place the corporation on the same level with an individual.

Mr. HARRY WHITE. Mr. Chairman: With all deference to legal gentlemen here of very large experience, I must call attention to the fact that this is but a reiteration of our present act of Assembly on this subject. I hold in my hand the act of Assembly of 1870, the passage of which I recollect very well, which provides:

"In addition to the provisions of the sixty-second section of the act of the sixteenth day of June, 1836, relating to executions, and in lieu of the provisions or proceedings by sequestration under said act, the plaintiff or assigns in any judgment against any corporation not excepted by said act, may have execution by *ieri facias* issued from the court wherein said judgment is entered, which shall command the sheriff or other officer to levy the sum of said judgment, with interest and costs of suit, of any personal, mixed, or real property, franchises and rights of such corporation, and thereupon proceed and sell the same, excepting lands held in fee, which latter shall be proceeded against and sold in the manner provided in cases for the sale of real estate."

Under this act of Assembly numerous instances have occurred within my knowledge—not in my practice at all, but within my knowledge—of the sale of the personal property of railroad corporations and of franchises, and by subsequent acts of Assembly, or possibly prior acts of Assembly, I do not know which, the purchasers are authorized to re-organize to continue the business.

Mr. SHARPE. I should like to ask the gentleman a question. Was not that law repealed?

Mr. HARRY WHITE. No, sir.

Mr. SHARPE. Was not there an effort made to have it repealed?

Mr. HARRY WHITE. Quite likely there was, though I do not recall it. It was not repealed to my knowledge.

Mr. CUYLER. The law was repealed and re-enacted at the same session of the Legislature; but the law is an infamy upon the statute book of Pennsylvania, and if I had the floor to speak, I could demonstrate it.

Mr. HARRY WHITE. I do not recall the fact of the repeal. I know that to-day this law is on the statute book. I know furthermore that this law was passed over the Governor's veto, and it is well enough that gentlemen should know the fact that we have a law of that kind.

This section is not hostile to corporations. It may be to the prejudice of individual stockholders. I can conceive of a case where a large corporation may be a creditor of a struggling railroad company, and some people, small subscribers in the locality, have paid their money in good faith, and it is the desire of the large stockholders, the big fish, to swallow up

the little fish, and it is very easy for them to reduce their claim to judgment and sell out the concern and deprive the poor stockholders of every advantage.

I am not clear that this section should be adopted, not on account of the corporations, but because of the injustice it may do to small and honest subscribers.

Mr. CUYLER. Mr. Chairman: May I have the indulgence of the house for a brief statement? ["Yes."] About four or five years ago certain individuals in Pennsylvania who were interested in getting possession of a line of railway from a coal mine down to the Trevorton Basin, had this act of Assembly passed through the Legislature unknown to anybody. Indeed it has been sometimes doubted whether it really was passed at all; whether it did not simply appear on the statute book without ever having had the action of that body. Under it an individual holder of a coupon of one of the bonds of the company obtained a judgment before an alderman in one of the counties of this State, sold the whole work at a sheriff's sale under a judgment obtained for an amount less than one hundred dollars, the mortgage being, I think, \$300,000. Foreign holders who held very largely of the bonds of the company applied to counsel in this city and sought an injunction to restrain the organization of a company under that sale. An injunction was granted by the Supreme Court, first at *nisi prius*, and afterwards continued by the Supreme Court in banc, declaring this section in substance to be violative of common honesty and common right. A compromise then took place whereby about two-thirds of the amount of the mortgage was paid; and thus the question was withdrawn from final adjudication. At the next session of the Legislature afterward, to wit, the session of 1870, that law was repealed; but by some of that marvellous magic which had been made instrumental in its original passage, it was re-enacted at the same session; and thus does it appear on the statute laws of 1870 as having been both repealed and enacted at the same session.

But let us think for a moment just what that section does. Under that section it would be competent for an individual bondholder of the Pennsylvania railroad company to obtain a judgment on a single coupon in some obscure county of this Commonwealth for thirty dollars, and within the bounds of that county to sell out that corporation, all its property, to

divest all its mortgages, and, if it is good law, transfer the whole property to the sheriff's vendee.

If this Convention is prepared to accept the doctrine of the gentleman from Indiana and to believe that the Supreme Court of Pennsylvania will maintain a sale thus had to be a lawful sale, then the view that he takes of this question is correct; but otherwise it is not correct.

Mr. HARRY WHITE. Will the gentleman allow me to interrupt him?

Mr. CUYLER. Certainly.

Mr. HARRY WHITE. The delegate misapprehends me. I did not say that I was in favor of the policy; I was merely referring to what the law is.

Mr. CUYLER. I understood the gentleman so to state. I do not believe that the law is so. In the solitary instance in which a question ever came before the Supreme Court under it, the Supreme Court granted the injunction, it being on an appeal from a motion for a preliminary injunction in which the injunction had been granted; but before the question came up for final hearing a compromise took place and there never was a final decision of the court. My word for it, whenever it does come to a final decision, that act will be blotted out, for it is so infamously wrong and so infamously unjust that no court could fairly or honestly maintain it to be the law of the State.

Mr. COCHRAN. Will the gentleman allow me to interrupt him?

Mr. CUYLER. Certainly.

Mr. COCHRAN. My impression is—the gentleman from Greene (Mr. C. A. Black) is familiar with it, and he can correct me if I am wrong—that a case was taken up from Greene county to the Supreme Court, and the Supreme Court decided that the act of 1870, allowing a writ of *hæri facias*, was valid, and that it superseded the process by sequestration.

Mr. HARRY WHITE. That is correct.

Mr. CUYLER. I was not aware of that; but in the other case to which I alluded, which occurred as recently as 1871, an injunction was granted and was maintained by the court in banc. That was the case of *Pickersgill vs. The Trevorton Coal and Iron company*. I presume that no mortgage is placed by a corporation in this State on its property, except under authority of an act of Assembly. The charter of the company or some supplement to it authorizes the corporation to mortgage its property and to mortgage its franchise and to mortgage all that is requi-

site to the execution of its franchise. In other words, the railroad company executing a mortgage is authorized, by the law that empowers it to execute the mortgage, to mortgage its rolling stock and everything else that is requisite to the execution of its franchise. If that mortgage was executed by lawful authority how would the Legislature authorize the sale under a *fi. fa.* of the pledged property in such a way as to divest it from the pledge?

Mr. SHARPE. If the gentleman will pardon me, I should like to ask him whether this section could affect property that is covered by a mortgage?

Mr. CUYLER. I do not think it could.

Mr. SHARPE. Then so far as the argument the gentleman is making about mortgaged property is concerned, it would not apply to cases of that kind. I desire to know of the gentleman what objection can there be to a provision, applying to cases arising hereafter, that a junior judgment creditor could not take in execution any property encumbered by a prior mortgage?

Mr. CUYLER. Let us see. As to all the existing corporations of the State which have created mortgages, the argument of the gentleman concedes that this section will be wholly inoperative. Now, of what use is it to be outside of that, supposing you pass it? In the first place, if it has any value at all, it draws a broad line of discrimination between all the existing mortgages and those that may hereafter be created. No corporate mortgage that now exists could be touched or disturbed by it in the slightest degree; but it would operate only upon future mortgages. What would be its effect there? What railroad company could borrow on the simple mortgage of its road-bed and grade? What transporting company could borrow if its mortgage did not carry with it to the bondholder the security of that by which the franchise is operated and made effectual. You might as well make the section read, "there shall be no such corporations," because none of them are created without borrowing; and when you pass a section like this you take away from them the power of borrowing wholly. It then becomes a thing utterly impracticable. It has no real value. It is simply saying, "you shall not do by notorious agreement, knowledge of which is communicated in the same way that the law communicates knowledge of all other agreements, to everybody having

transactions with the corporation, that which is necessary to create the corporation and vitalize it and make it an efficient instrument for the public good; you shall not mortgage (for it amounts to that) the rolling stock of the railroad; you shall not mortgage anything that has to do with the operations of the corporation; you shall not mortgage that by the mortgage of which alone you can secure the money that would enable you to make the public improvement." It is to put a stop to public improvement entirely. That is the practical effect of it.

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

Mr. CUYLER. Certainly.

Mr. CURTIN. If we pass this section, and the property of a railroad company is regarded as personal property, and a judgment is obtained by a creditor and the personal property is sold, as is the personal property of individuals, could not the purchaser take it away? Then what would become of the railroad?

Mr. CUYLER. I ask the gentleman if he speaks of existing corporations or those that may hereafter be incorporated?

Mr. CURTIN. Those that may hereafter be incorporated.

Mr. CUYLER. It would be practically out of the power of the Legislature, if this section should pass, to authorize those corporations that may hereafter be incorporated to mortgage their personal property. They would not be able to do it, and therefore the creditor could buy and could remove the personal property if such a sale took place.

Mr. CURTIN. If the creditor chooses to levy on a locomotive or any other property of the road in any locality, if it is regarded as other personal property, could not the purchaser, at the constable's or sheriff's sale, move away that personal property?

Mr. CUYLER. He could take it away if this section passes.

Mr. CURTIN. Then it seems to me the section must be very absurd.

Mr. SHARPE. Would this section prevent a future mortgage on the rolling stock? I ask simply for information, because I wish to be informed.

Mr. CUYLER. Certainly it would.

Mr. SHARPE. Might not the company put a mortgage on its franchises and rolling stock which could not be touched by a junior creditor?

Mr. CUYLER. No; because the Legislature could not take away from any

creditor, junior or senior, the constitutional right to levy on all the movable property of that road.

Mr. MANN. Mr. Chairman: The inquiry of the gentleman from Centre (Mr. Curtin) suggests a number of objections to this section in my mind. It seems to me that the whole effect of the adoption of the section will be to discourage the construction of railroads in those sections of the State where the people now need them. It will operate against the existence of feeble railroad companies and will have no possible influence on those which are well-established and well-conducted. The companies hereafter to be organized to build railroads, of necessity will be feeble ones. Great lines have already been established leading through the State in so many directions that the remaining companies to be hereafter organized must necessarily be feeble ones; and this section will bear especially hard upon them for the reasons given by the gentleman from Philadelphia (Mr. Cuyler) and for the reasons which are very largely suggested by the inquiry of the gentleman from Centre. They will be unable to secure credit if any individual who may obtain a small judgment against them may sell out their rolling stock, if they happen to have any, and their franchises, and may take away from them their charters. If this section is adopted, the constable in any township may sell the charter of those companies away from them; and it might be for the interest of some wealthy company to pay all it would cost to take the charter and lock it up.

The act of Assembly quoted by the gentleman from Indiana (Mr. Harry White) was about to go into operation in the spring of 1871, and hence the friends of the Muncy Creek railroad company came to the Legislature and asked that it be repealed so far as it related to that company, and the argument presented was so strong that the Legislature repealed that law as to the Muncy Creek railroad, because an execution in the hands of a constable was about to sell out the franchises of that road then being constructed, and it was an improvement which the people of Muncy and of the valley of Muncy Creek were in great need of. Its completion was calculated to develop that section of the country largely and was an improvement of great value to them; but unfortunately they became involved and embarrassed, and they were about to lose their franchise when the Legislature came

to their aid and repealed the act of Assembly as to that company, allowing it to remain as to all others. It seems to me that it ought to have been repealed entirely, for I can see no good to come of it; and I should like some gentleman who advocates this section to tell us what possible good is to come from the adoption of this section. It is simply to crush out the feeble railroad companies of the States and to leave untouched the wealthy ones, for they can all of them discharge their debts without any trouble whatever.

Of what possible value are the franchises of a company which this section proposes may be sold by the sheriff, to any persons except those who want to destroy a competing line and to those individuals who are struggling to build it? The franchise of a feeble railroad company will fetch nothing in the market unless some wealthy corporation desires to prevent a competing line, or unless its friends have the means of stepping forward and purchasing it. It is good for nothing else, and it is good for nothing in the hands of any other class of people. There is, therefore, no possible good to come from authorizing it to be sold as personal property.

Ample remedies are provided by law for the collection of debts from corporations, such as putting the railroad itself into the hands of a receiver, or what is equivalent to it, and allowing it to be run. All provisions of that kind are calculated to develop the State; but a provision that authorizes the sale of the road is calculated to prevent the development of the State. It does seem to me that this Convention is not called upon to take any action on this subject. The Legislature have ample power over it. They have exercised the power unwisely as I think; but this section proposes to fasten that legislation, unwise as it is, perpetually upon the State of Pennsylvania. There may be a difference of opinion about it; but certainly in the only instance in which the provisions of the act of Assembly were attempted to be enforced, the Legislature was constrained to interfere to stop it, because every one whose attention was called to it saw that it simply allowed the enemies of a feeble railroad company to strike at it and break it down.

Now, to the passage of such acts of Assembly as the one alluded to by the gentleman from Indiana, there is no opposition on the part of the wealthy railroad corporations. They do not object to such legislation as that. They know perfectly

well that it cannot hurt them, and it may enable them to put their hand upon some proposed competing line and gobble it up. Hence no great railroad corporation of this State made any objection to the passage of the law quoted by the gentleman from Indiana. It went through flying, by a two-thirds majority, simply because there was no opposition to it. No corporation feeling its strength had any sort of objection to it, for they knew that its only effect would be to strengthen their power over the State of Pennsylvania.

I do not believe that the committee who framed this section looked at that side of the subject. I cannot think that they did, for I am confident that the general spirit of the article which we are considering is in the interest of the people; but this section is in the interest of wealthy corporations. I hope, therefore, it will be voted down.

Mr. HARRY WHITE. Will the gentleman from Potter allow me to ask him, as I did not hear him fully, whether he represented me as favoring this section?

Mr. MANN. Not at all. I simply said that the law was as read by the gentleman from Indiana, but that in the only instance in which it was attempted to enforce its provisions, the Legislature, in 1871, interfered and put a stop to it, because it was about to operate to destroy a feeble railroad company.

Mr. C. A. BLACK. Mr. Chairman: In my opinion this is a very important section and should be well considered by the committee. My opposition to it is twofold. In the first place, it is purely a matter of legislation, and if it be necessary at all, it is entirely competent for the Legislature to pass such a section. My second reason is that there is an adequate and full remedy under the acts of Assembly already, not by selling out the corporation, its franchises, and all its privileges, but by sequestration under the act of 1836. The delegates who are members of the bar know very well that under the act of 1836 a creditor having a judgment against a corporation can issue his execution and apply for his sequestration, and then the property may be sequestered and go to the benefit of all the creditors.

On the seventh of April, 1870, the Legislature passed an act of Assembly virtually repealing the act of 1836, and allowing the entire franchise and all the property of a corporation to be levied on and sold absolutely. It was a most extraordinary

act of Assembly, one that could not be accounted for on any proper principle at all. Under the provisions of that extraordinary act of 1870, an execution creditor in Chester county applied for a sequestration. The Supreme Court in that case, Judge Thompson delivering the opinion, decided that the act of 1870 over-ruled or repealed the act of 1836, that there was no more a remedy by sequestration, and that the only remedy then was to sell out the corporation by execution. In a case taken from my own county, in which we proceeded under the act of 1870, and levied on the corporation and sold it out, the question came up. It was a case of distribution, it is true; but the principle was decided. In that case the Supreme Court held that the case in Chester county was improperly decided, and that this act did not over-rule or repeal the act of 1836, and it reinstated the act of 1836.

Mr. HARRY WHITE. Is that reported?

Mr. C. A. BLACK. It was taken up from Greene county, but not yet reported.

Mr. HARRY WHITE. What is the name of the case?

Mr. C. A. BLACK. *In re* distribution of the proceeds of the sale of the Waynesburg and Rice's Landing Turnpike company, decided at November term, 1872, on appeal from the common pleas of Greene county. Now, under that decision, the act of 1836 is in full force and effect, and any creditor who has a judgment against a corporation can proceed by sequestration.

Mr. WOODWARD. Do I understand the gentleman's argument to be that under our sequestration act creditors have the same remedy that they would have under this?

Mr. C. A. BLACK. A full remedy; not the summary remedy that this would give. I think it is wrong to give a summary remedy.

Mr. WOODWARD. The gentleman says it is a full remedy. The gentleman knows very well that corporations can be put into sequestration only after the sheriff has returned *nulla bona*.

Mr. C. A. BLACK. Certainly.

Mr. WOODWARD. That being so, if this Constitution provides that the franchise and rolling stock shall be personal property, the sheriff cannot return *nulla bona* to an execution.

Mr. C. A. BLACK. We understand that very well. That is a mere matter of form.

Mr. WOODWARD. The gentleman will

observe that this provision makes this kind of interest personal property.

Mr. DARLINGTON. But it may be mortgaged.

Mr. C. A. BLACK. Yes, sir, certainly; and the Supreme Court held that all the property belonged to all the creditors, and you cannot give a preference. Pass this, and one creditor would have a preference.

Mr. HARRY WHITE. Was there not some special provision in the act of Assembly incorporating that company?

Mr. C. A. BLACK. No, sir; the act of 1870 just allowed the judgment creditor to sell the entire concern without any limitation whatever, and of course in that case the plaintiff would get the whole of his claim. The Supreme Court held that that act did not repeal the act of 1836 as to sequestration. I maintain that against a corporation we have a full and sufficient remedy whereby all the creditors can get their claims.

Mr. HARRY WHITE. Did they decide in that case that the proceeding under sequestration and this proceeding under the act of 1870 were cumulative?

Mr. C. A. BLACK. Not at all, but that the remedy must be by sequestration; that you could not sell out a corporation under the act of 1870; that if you did, the proceeds went to all the creditors; that it did not repeal the act of 1836 as to sequestration.

Mr. HARRY WHITE. That was a question of distribution, though.

Mr. C. A. BLACK. My objection to the section is that it would give a summary remedy against corporations which would be utterly destructive to any corporation. Under the act of 1836 the Supreme Court had already decided that nothing essential or necessary to the carrying on of the enterprise could be levied upon. There is common sense in that; there is a reason why a petty creditor should not stop the operations of an entire corporation by selling out the franchise which gave it existence. That was the law until 1870, when the Legislature passed the act referred to. That I maintain has been reversed; and now under the act of 1836 there is a full and complete remedy, one by which all the creditors can have justice done them and a *pro rata* share of the proceeds by sequestration.

Adopt this section, and one man might stop any railroad corporation in the State by one of the most summary proceedings of levy on its rolling stock, essential to its

very existence, and deprive the other creditors of all share in the proceeds.

I maintain then, Mr. Chairman, that we have a full remedy; and if we have not, the Legislature is surely competent to give a remedy in a case of this kind, and we should not adopt as part of the Constitution that which can be supplied by the Legislature by a statute. That is my view of this section. I think it extremely important, and it should be well considered by the committee. I am not in the neighborhood of any great corporation, and I can speak disinterestedly; but surely it would be a very dangerous section to incorporate into the Constitution so far as corporations are concerned.

Mr. WOODWARD. Mr. Chairman: How government shall deal with the debtor portion of the community has always been a question in political science, and it is presented now in the form of this section. The community consists of natural and artificial individuals; of persons and corporations. The government deals with natural persons after this fashion: In the original charter of William Penn lands were made chattels for the payment of debts; all interests of the citizen were made liable for his debts; but the government in its humanity exempts a very small portion of the individual's possessions. It leaves a man a bed, a cow, a stove and a Bible; and it does not leave him much else. This is the way the State deals with that class of its citizens who are natural persons, such as God made.

Now, the question is, how shall it deal with those artificial beings with the production of whom the Almighty had nothing to do, whom we have made, the creatures of our own hands? Shall we subject them to the same rule to which we subject other people, black and white, male and female; or shall we lift them up to a higher plane and exempt all their available property, because of the good they are supposed to do the community in their corporate character? This is a question of considerable magnitude, and it involves considerations that touch the foundations.

I suppose the committee of which I have the honor to be chairman, though I really had nothing to do with this particular provision, in recommending this section intended to put corporations upon the same level with human beings, and to subject all their property to execution for their debts, not thinking it worth while to make that sort of exemption that

is made in behalf of other poor debtors. Well, sir, I confess there seems to me to be a natural equity in that rule. My friend before me (Mr. Cuyler) tells you that this will destroy all railroad corporations, and he has put a very affecting case of a judgment obtained in some remote county for a thirty dollar coupon, and a levy upon the rolling stock and the franchises of the Pennsylvania railroad company in that county.

Mr. CUYLER. Not within that county, but everywhere. That is the provision.

Mr. WOODWARD. That is worse than I thought it was! That is a very sad case, sir. Now, what is the answer to it? Pay your debts, and then your property will be safe. Pay your thirty dollar debt, if you owe a man thirty dollars honestly and fairly. There is no more reason, in the nature of things, why a great railroad company should not pay that creditor than there is why I should not pay my creditors; and my creditors are the most unreasonable people that I have ever had anything to do with, for they insist on their money being paid precisely when it is due, and the gentleman could not persuade them to forbear on account of the inconvenience it would be to me to have an execution against me. [Laughter.] I think that is a full answer to the gentlemen's argument — "pay your debts." "But we cannot pay our debts," it may be said. No; and if the gentleman were not so near me I would assert here what I once asserted in his presence elsewhere, that there was no railroad company in this country that could pay its debts; and, sir, moreover, be it known to you that there is no railroad company in this country that ever will pay its debts. Tell me of a loan that was ever paid off except by another loan. I ask the gentleman to refer me to a loan of a railroad company that was ever extinguished except by another one.

Mr. CUYLER. I can tell the gentleman of a railroad company to-day that has in its sinking fund more money than all its mortgage debts.

Mr. WOODWARD. More "money?"

Mr. CUYLER. More assets.

Mr. WOODWARD. But has that railroad company ever extinguished any one loan that it made of the public except by another loan? I ask my friend that question.

Mr. CUYLER. That it has actually done so, I should hesitate to say; that it has

been in condition to do so for years, I am ready to affirm.

Mr. WOODWARD. That is what we call a departure in pleading—a new departure. [Laughter.] That is not my proposition. My proposition is that they never have paid their debts and never will pay them, and nobody is green enough to suppose they ever will pay them.

Then, what is this stupendous affair? Why, sir, it is a draft upon the credulous generation in which we live and those which are to come; it is a draft upon the credit of the people who give their money to these corporations to build their railroads. The presidents and vice presidents, and sometimes the counsel of these big railroads, take to themselves great honor for the good they have done to the public; but if you will look beneath the surface, you will find that the work was done with the money of the people. What railroad was ever built with the money of the stockholders—tell me one?

Mr. CUYLER. The stockholders are part of the people?

Mr. WOODWARD. I speak of the stockholders now as contradistinguished from the people. What railroad was ever built by the stock subscribed and paid by the stockholders? If the gentleman is well informed, and if he is not, my friend over the way, of the Reading railroad, (Mr. Gowen,) is well informed on these subjects, and I should like to know of one. Why, sir, I do not know of any. They have all been built on loans. What are loans but borrowed money, and what are they but dealing on borrowed capital? I do not subscribe exactly to the sentiment that all who deal on borrowed capital ought to break. That was the maxim of General Jackson, but I do not subscribe to it, *ex animo*, for a great many worthy people and worthy corporations do deal on borrowed capital, and I do not want to see them break.

Mr. DARLINGTON. Will the delegate from Philadelphia allow himself to be interrupted?

Mr. WOODWARD. Certainly.

Mr. DARLINGTON. I ask if the effect of his argument is not to aggrandize those bloated bondholders who have loaned their money voluntarily?

Mr. WOODWARD. I have not said anything about "bloated bondholder." I have said that these companies have been built up and maintained upon the money of the people of this country and other countries.

Mr. DARLINGTON. Voluntarily loaned.

Mr. WOODWARD. Voluntarily, of course.

Mr. DARLINGTON. Are not those capitalists able to take care of themselves?

Mr. WOODWARD. These bonds are bought by everybody, are bought voluntarily of course. There is no superincumbent necessity upon anybody to buy these bonds; but people do buy them, and this is a credit. That is where the principle of credit comes in. Right here is where I want to call the attention of this Convention to the principle that is before us in this section. Shall this extraordinary credit be extended so far as to exempt these corporations from the payment of their debts? They will of course generally pay their ordinary debts, such debts as are usually paid out of personal property; but that they will ever pay their loans I do not expect. I have no more idea that they will pay their debts that are in this shape than I have that the British government will ever pay their debt, and I do not know but I may add than I have that this government will ever pay our debt.

Mr. CUYLER. I do not believe that. They will pay every dollar of the debt of this country. I am too good a Democrat not to believe that they will pay every dollar of it.

Mr. WOODWARD. I beg the gentleman not to go off half-cocked. I have not said a word about repudiation. The English government has not repudiated its debt although it will never pay it. The interest will of course be paid regularly, but I have no idea that the debt itself will ever be paid. I am not perfectly clear that the public debt of this country will ever be paid; but I am quite clear that if it is not paid it will sink this nation. It must be paid or we must cease to exist as a Republic. The British government could not exist as a Republic under its debt. As to the payment of our debt, I am not clear. It will depend on several circumstances whether it will be paid or not; but that is a question that I have not time now to discuss.

These great loans will never be paid. Loan will be piled on loan, like Pelion on Ossa, and that is called business. Well, sir, a great many incidental advantages result to the community out of this condition of things. If I was to testify in a court of justice about the advantages and improvements and advancements that I have seen in the State of Pennsylvania as a consequence of railroads, I think it



would be rather an interesting story. I have lived long enough in Pennsylvania—I have lived all my life here—to see the vast effect of railroad improvements on the general prosperity of Pennsylvania, and I assure you, sir, it is vast. Pennsylvania to-day is what she is by reason of railroad enterprises. They have done this State incalculable service, and I am happy to acknowledge it, and I am not in favor of so crippling them as to prevent the doing the public service in the future. When the system of railroads was first introduced nobody understood it, and the railroad companies got from the Legislature large powers, which we cannot now recover from them, which, if we were to grant now, we should restrain and limit in many respects. But they have been of incalculable service to the State of Pennsylvania. Why, sir, I remember perfectly when it took ten days for John Binn's paper, published in this city, to get to my native town, and then it only got there in case the old revolutionary soldier who carried the mail-bag on his back did not get sick or drunk by the way. [Laughter.] That was the freshest intelligence we had, and I am surprised to find that in that day, without any common schools, and when there was only a ten days mail there was more intelligence apparently in the community than there is now. I do not know how that is, but now railroads bring us mails two or three times a day.

How far shall we indulge this vast system of railroads? They are a great beneficence, and we could no more live without them than we could live without atmospheric air; but how far shall our government go in indulging them, and in distinguishing them from natural people in the payment of their debts? That is the present question; all this property, these franchises, these valuable franchises, these too valuable franchises, that are held by these old companies, this rolling stock and these other forms of personal property, this section says shall be treated as personal property; they shall be in the hands of these railroad companies just what horses and cows shall be in the hands of natural persons, subject to execution and levy for their debts. We must either say that which the Committee on Private Corporations propose, or we must take the ground that by reason of the great beneficence of this system of railroad companies, built up as they are, entirely upon public credit, and not upon individual en-

terprise, they are so valuable to the community that they should be permitted to hold personal property without being liable for their debts; that they shall be distinguished from other debtors and left in the enjoyment of their property to laugh their creditors in the face! Are we prepared for that? I do not apprehend the slightest inconvenience to the feeble companies which my friend from Potter county (Mr. Mann) talks about so feelingly; but if a company is so feeble that it cannot pay its ordinary debts, it is time that it made a transfer. And if you impose upon them a rule that they shall pay their ordinary debts out of their personal property, they will be very careful about contracting debts and very vigilant in extinguishing them, and then I think the thing will adjust itself.

On the whole, I have no particular feeling in behalf of this section; and yet, looking at the community in a general and just way, I cannot propose to my mind a reason why a railroad company or other corporation should possess personal property that is valuable and be making money out of it, and yet hold that personal property exempt from levy and sale on execution. But take all other corporations. Railroad companies are not peculiar in this regard, in being built out of other people's money. Take the insurance companies; what do they do? They take the money of A and B and pay the losses of C and D with it. That is all. Life insurance, which is the greatest humbug of our day, the worst form of gambling we have—notwithstanding that they get susceptible clergymen and widows to certify for them [laughter]—is only the same thing. There is in the city of New York, a company that about twelve or thirteen years ago was incorporated with a capital of \$100,000, and I believe that now the very building in which that company has its office on Broadway cost more than that money. And you will see on the sign of their agency on Chestnut street, near the Continental hotel, of which my friend is one of the directors—

Mr. CUYLER. One of the Philadelphia directors and I am not ashamed of it. I am proud of it.

Mr. WOODWARD. You will see it there stated that their receipts are now about eight millions of dollars per annum, I believe.

Mr. CUYLER. More than that.

Mr. WOODWARD. I do not know how many millions this company, that with one hundred thousand dollars capital put into a marble building on Broadway, claims to have controlled and handled. Is anybody at a loss to see what this transaction is? I believe that is one of the very best life insurance companies of this country, and when such gentlemen as my friend (Mr. Cuyler) lend their names to it, it is enough to give it currency and sanction here. But what is it? It is collecting immense sums of money from everybody in the country and paying out as few of its losses as it can, piling up the residue and calling that business. [Great laughter.]

Mr. CUYLER. Oh, no! I beg to assure the gentleman that that company has met all its obligations and losses fairly and promptly, and regards it both as a duty and a pleasure to meet them.

Mr. WOODWARD. How does this become their money? Did they ever pay any widow for the loss of her husband out of their own money? Never since the world began; and they never will, any more than the railroad companies will ever pay the loans they make.

That is life insurance. Now take banking. Here is a bank charter. The stockholders subscribe to some stock and they take everybody's money on deposit, and in other forms of business make large profits out of it. The rate of interest is six per cent., and the bank makes seventeen per cent. out of its franchise. But how? By dealing with other people's money. It is not their money that they make seventeen per cent. out of. They are making this large percentage out of other people's money. So you may go over all the business-doing corporations, and you will find that they are all built on public credit, on the faith of the people in the corporations. That corporation that enjoys the largest measure of public faith, like some of those that my friend (Mr. Cuyler) is connected with, makes the largest draft on the pockets of the people. The corporations use his good name and the good name of others to get money out of the pockets of the people, and it is never returned there and never will be returned between this time and the day of judgment.

Shall these corporations, enjoying these large privileges of taxing the people and taking their means and speculating on them, be permitted also to hold personal property exempt from levy and execution for their debts? That is the ques-

tion now before us. For one, I have made up my mind that I will vote for this amendment, but I do not care anything about it. When the subject was up some weeks ago, on the report of the Committee on Railroads and Canals, I believe I made a speech against levying execution upon cross-ties and rails—

Mr. COCHRAN. Will the gentleman allow me to interrupt him?

Mr. WOODWARD. Certainly.

Mr. COCHRAN. Then I would remind him that that proposition was merely as to the question of taxation.

Mr. WOODWARD. The argument there was that if you could tax this kind of property you could sell it. I believe the Convention decided that you could sell it.

Mr. CORBETT. No, sir.

Mr. WOODWARD. I think that was the vote of the Convention.

Mr. CUYLER. The vote was that railroads could not be taxed by counties or municipalities.

Mr. WOODWARD. Well, the principle that it was taxable property was settled by the Convention. Then, if it is taxable, it is leviable property; and that was my argument on that occasion; I was opposed to the tax on that reason; but if you tax it for public purposes you must allow the creditor to seize it in satisfaction of an execution.

Mr. Chairman, I do not believe that any great inconvenience will result practically from the operation of this rule. My friend from Greene county (Mr. C. A. Black) does not state the existing law exactly as I understand it to be. Under the act of 1836 and under other acts of the Legislature which I have before me, corporations are classified as those who are able to pay their debts and those who are not able to pay their debts; and a corporation comes into the class of insolvent corporations by the return of "*nulla bona*."

The CHAIRMAN. The Chair will remind the gentleman that his time has expired.

Mr. LILLY and others. I move it be extended.

The CHAIRMAN. Do five gentlemen rise to object? If not, the delegate will proceed.

Mr. WOODWARD. I was going to add that my understanding of that act of Assembly is that until a corporation is declared and ascertained to be insolvent by the return of *nulla bona* to an execution, it is not subject to sequestration at all.

Then, and then only, it becomes subject to sequestration. Now this section proposes to make all the things enumerated here personal property, so that no sheriff can return *nulla bona* to an execution against a railroad company that has rolling stock, franchises, &c. I think that this is a great advance upon the present rule of the statute. Whether it is a wise step to take is the question to be considered; but to say that this is not necessary because of that statute is, I think, to misapply terms.

Mr. BRODHEAD. Mr. Chairman: I move to strike out the words "the franchise" in the first line.

The CHAIRMAN. The question is on the amendment of the gentleman from Northampton.

Mr. MANN. Mr. Chairman: The chairman of the committee who reported this article hardly states the proposition—

The CHAIRMAN. The Chair will remind the gentleman from Potter he has already spoken once.

Mr. MANN. Not on this motion to strike out.

The CHAIRMAN. The gentleman from Potter will proceed on the amendment.

Mr. MANN. My argument in favor of the amendment proposed is that the franchise is so intangible and so immaterial, as I stated before when I was making my argument, it is worthless except to certain parties and therefore clearly it ought not to be sold as personal property. Now I want to say further to the committee that it seems to me the very able chairman of the Committee on Corporations, who has just made a very interesting argument in support of this section, does not state the proposition quite fairly. His whole appeal in favor of the section is that unless you adopt some article like this you make a distinction in favor of corporations, exempting them from the payment of their debts.

Mr. Chairman, that is not the issue at all. The simple issue is: Will you apply the same method of collecting debts to individuals that you do to corporations? Nobody proposes to exempt corporations from the payment of their debts. The law is now, and has been for years, I believe ever since we have had corporations, to compel them to pay their debts; but it provides one method for collecting the debts of corporations and another method for collecting those of individuals; that is all. The question now is whether we will change from that system of applying

one method of collecting debts to corporations and another to individuals, or whether we shall have the same rule for both; not whether we will exempt corporations from the payment of their debts. But the gentleman himself will not carry out his principle. He will not argue that the property of the corporation of Philadelphia ought to be sold on execution, or the property of the counties of the State, or of the townships, or of the school districts. Why? Because the advantages of that method of collecting debts against municipal corporations would not balance the evils and the inconvenience to the public which would be created by it. So I argue that the advantages of this method of collecting the debts of railroad companies would not be balanced by the evils which the public would receive from that method of collecting the debts of railroad corporations; and the objection is just as strong to this method of collecting the debts of railroad corporations as it is to it as applied to municipal corporations. The law already provides ample remedies for the creditors of all municipal, railroad and other corporations. The question is whether we will depart from the present method of collecting those debts and establish a uniform rule of collecting debts against corporations the same as individuals.

I insist that it would be unwise to depart from the rule heretofore established and adopt the method proposed by the chairman of this committee. What good would come to the public from allowing the property of the city of Philadelphia to be sold upon an execution? Great injury and no good to anybody, because the law already provides a method of collecting those debts. So it does against railroad companies; and there is no necessity for the change which this section proposes.

There are a great many reasons why the change should not be made. I attempted to state some of them before; I will not enlarge upon them except simply to say that the public would receive far more disadvantage from this method of collecting debts than it would advantage, in my judgment. One is, as I stated before, that it would allow to be sold upon an execution the franchises of a railroad company, its charter and all its ethereal privileges, which would bring nothing to the creditors but would be of great injury to the public in the prevention of the erection of railroads where they are needed.

I simply rose to say that the gentleman himself will not argue that his principle should be carried out as to municipal corporations; and if not as to them, why as to these others?

Mr. CURTIN. Mr. Chairman: The chairman of the Committee on Private Corporations, who has addressed the committee of the whole with so much ability on this question, (Mr. Woodward,) before he sat down expressed doubts as to whether he was in favor of or against the section. Inasmuch as that learned gentleman, who has investigated this subject, has expressed a doubt himself, it is not strange that other delegates in this Convention should have doubts as to the wisdom of incorporating this section in the organic law of the State.

It may be quite true that no railroad company in Pennsylvania has paid its debts, and that none of them may ever pay their debts; but the picture of prosperity and progress which the learned gentleman drew so graphically of the effect railroads had produced on the Commonwealth of Pennsylvania, would compensate if they never should pay them. While that gentleman congratulates himself on the fact that the mail reaches the part of the State in which he lives three times a day, and that the railroad companies have brought into Wyoming valley the blessing of population, and wealth, and luxury, the incorporation of the section now under consideration into the fundamental law of the State will prevent the same blessings from being extended to such communities as that in which my friend from Potter, and my friend from Clearfield, and myself have our lot cast. Put this in the Constitution, and no railroad company will lend money to a feeble corporation to construct a road in a distant part of the State where population has to be carried by the road, and trade made by the presence of the corporation.

But that is not all. When we grant corporate privileges and permit an artificial body to construct a railroad and make it a common carrier, the corporators are not the only parties interested; nor are the bondholders or creditors of the company. The whole community in which that railroad is situated have a vast interest in it. If the ordinary means of transportation of persons and property are by means of the presence of the railroad taken away, the occupation of the usual common carrier is gone and the railroad becomes the carrier for all the community

where it penetrates and carries the blessings which the gentleman has so ably described.

Mr. Chairman: If you make the rolling stock of a railroad, its motive power, its cars, its engines, personal property, any man, any single creditor, can obtain a judgment in any county or township through which that railroad passes, and by levy and sale take away the rolling stock of that railroad; and who suffers most by that sale? True, the man has a right to collect his debt; but the community are deprived of their means of transportation and travel. If a man can obtain a judgment for \$30, if you choose, or \$50, and levy upon the rolling stock of a feeble railroad company and sell that stock, declared to be personal property by your Constitution, and take it away from the railroad, if he pleases, as he would the household furniture or the cattle or the movable property of a citizen, that railroad becomes useless. He may be paid his debt; but the community that had the use of that railroad, and the use of which is a necessity to their comfort and convenience, are deprived of it.

The means for the collection of debts against corporations and particularly railroads, as I understand the learned lawyers of this Convention, are ample now; and if they are not sufficient to enable the debts to be recovered, further remedies can be provided by the Legislature; but I would not in this way change the whole organization of corporations in the State; I would not thus destroy the privileges and immunities you have granted and the franchises you have given to corporations to make those improvements in your State which have advanced your prosperity, your power, your happiness and your convenience; nor would I put the prosperity of any part of the State penetrated by a railroad, made, if you please, by the money collected off the neighborhood, which they never expected to have returned, at the mercy of the execution of a single man, whose debt ought to be paid to be sure, but for the payment of whose debt a whole community should not be made to suffer.

Mr. Chairman, we are building railroads in the interior of the State continually by the subscription of stock, by individuals, that they never expect to reap a return from; and when we are exhausted in our means we apply to large railroad companies, to the great moneyed centers of the State, and we entreat them to come and

take a mortgage on the unfinished road, and if they choose to sell the road on their mortgage when it is rightfully foreclosed, let them do it, because we have our compensation for the money expended in the enhanced value of the lands through which the railroad runs. Why, in Mifflin county, no nearer this market than the county in which I live, with land no better, nay, inferior in quality, they sell their land at \$100 to \$125 per acre, and in the county in which I live, the best land, as good as the land in Lancaster county, can be had for from \$50 to \$80. A company is now struggling with limited means, they are looking to large moneyed corporations for assistance, to build a railroad through that country. The people along the line of the road, the townships and individuals, have subscribed to the extent of their means. The very instant the whistle of the first locomotive is heard in that valley, the land will be equal in price to that land lying over the range of mountains in Mifflin county. The people, the sensible, the sober-minded, the liberal-headed men and women of Pennsylvania understand this question just as well as learned gentlemen in this body, and they are perfectly willing to give their means to have the comfort and the convenience of railroads extended to them.

Mr. Chairman, for the reasons offered by the gentleman from Potter, and in the absence of substantial reasons given for the introduction of this section into the Constitution, I shall vote against it.

Mr. BIGLER. Mr. Chairman: I agree very fully with the learned delegate from the city (Mr. Woodward) that I can see no reasons why the artificial person should be exempted from liabilities that come upon the natural person. Indeed I agree with nearly all the theory which he laid down; and I do not rise for the purpose of entering into that argument at all; but in view of what he has said and what the distinguished delegate on my left (Mr. Curtin) has said with regard to the blessings in the form of development in our State, and the general progress and prosperity stimulated by railroads, I desire in a very few words to allude to a single road of forty miles which is very familiar to my friend from the city, as it is to my friend from Centre. It is worth recalling as a matter of history. Rarely indeed do we find, even in the remarkable railroad progress and success of our country, a case more peculiar and more extraordinary.

I have reference to to a railroad known as the Tyrone and Clearfield. It was commenced some years ago and struggled as a separate corporation. I remember very well when it was brought down to the necessity of issuing what might be called scrip in order to pay the pressing necessities of the contractors. In that way they gained subsistence. They struggled along in the construction of that heavy work, and all the means that could be commanded in that region were cheerfully given them. I am gratified, I am proud to say, that I was amongst those who gave all I could well spare at that time. But after a time we were unable to go any farther; operations ceased; the company was powerless. In truth the road was sold out from Philipsburg to Tyrone bodily on a judgment which the Pennsylvania railroad company, I believe, held against it at that time. But the franchises remained; the road was constructed; it penetrated into that wild region.

Finally it was stocked and commenced operations. More recently, beginning in 1866, it was extended to Clearfield. I am gratified to have it in my power to say that I had some part in it. In all that region the people subscribed largely. We gave all we could in order to make the railroad a cheap railroad, so that the company could find the means to construct it. It is now in operation from Tyrone to Clearfield, and in that country, which a few years ago I was in the habit of riding on horseback, or getting through with a buggy, or going in a stage, we have two daily lines of passenger cars. We bring on that short road to the main stem of the Pennsylvania road over three thousand tons of tonnage per day. A road of forty miles, penetrating one of the roughest countries you can look upon, furnishes one-eleventh part of the whole tonnage of that main line. Here was a railroad that struggled through all these discouraging prospects. I remember very well when all the personal means of that company—

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

Mr. BIGLER. Certainly.

Mr. BEEBE. Would it have been possible to build that road if its debts had been paid?

Mr. BIGLER. No, sir; from the word "go," I believe it never had the means to pay its debts.

Mr. BEEBE. One more question. At the time that the Pennsylvania road got

their pay, did the laboring men on the road get theirs.

Mr. CURTIN. The laboring men were paid.

Mr. BIGLER. The laboring men were paid, I believe. I am not so familiar with that matter as I was in Congress at that time, and had not much personal connection with it; but I believe the laborers were paid by the Tyrone and Clearfield railroad company. That individuals suffered largely in that payment, I am also well aware. But what I want to say is, that all this trial, and all this suffering, and all this money have been richly repaid to every inhabitant in that country. They would no more entertain the idea of taking back what they gave, and what they suffered, and parting with the railroad than they would think of emigrating to some new country.

I speak thus warmly about the indirect advantages and consequential blessings of railroads; but whilst I say all this, I see no occasion, no wisdom, in giving corporations of this kind undue privileges or dangerous privileges. I have always held the reverse doctrine; but I have felt constrained to speak of this single road which I think is one of the most remarkable in this country.

Mr. CUYLER. A single word, because I think my colleague from the city (Judge Woodward) rather mis-stated or misapprehended—certainly he did not designedly mis-state—the meaning of this section. I do not suppose that anybody on this floor has ever contended—I have heard no one contend—that corporations should be exempt from the same law which applies to individuals; that is, the law that requires them to pay their debts. I do not think anybody has every contended for any such doctrine. I do not believe for a moment that the law should protect a corporation from liability for its debts, nor do I believe that the law does protect them from liability for their debts. But the question is partly a question of common honesty and partly a question of fair policy.

It is a question of common honesty in so far as this section should receive a construction that would assail existing corporate mortgages, it would take from those who have loaned their money on the faith of those mortgages the security that was lawfully given them for their debts. The law of the State has permitted a corporation to pledge its franchises and its rolling stock, its property generally, to those who have

loaned it money, to its bondholders, and they hold it in pledge, and like a mortgage held by an individual or any other pledge they may under existing circumstances foreclose upon the pledge and apply it to the payment of the debt. Now, any legislation that should seek to take away from them that which had been thus given them by lawful authority, would be unjust and unfair legislation.

Moreover, it would be impolitic legislation on the part of the State for the reasons that I stated a while ago—impolitic because no one would loan money to corporations of this character if they were not permitted to give such a pledge. If you do not permit the corporation to pledge that which makes its franchise valuable by giving it practical use and application, you will place the corporation in such a position that nobody will loan it money; and this very development which has been alluded to so eloquently by the gentleman from Philadelphia (Mr. Woodward) and by the gentleman who last spoke (Mr. Bigler) would have been a thing wholly impracticable, because the money that was necessary to carry it out never could have been secured.

It is not, therefore, a question whether a distinction shall be drawn between the corporation and the individual by saying that one shall be liable to pay his debt and the other shall not. No such distinction is even suggested. It leaves the corporation as it leaves the individual, liable to pay their debts, only applying a different method of payment in the one case from that which applies in the other, because the public interests, the public policy and justice to those who hold debts of the corporation under public authority, require that a different method of taking execution with them should be had from that which applies to the case of an individual. That is all it means—that and nothing more.

Now, as to the general remarks of my colleague, (Judge Woodward,) our most familiar friends may present themselves disguised so that we may not be able to recognize them. Under all this startling exhibition made by Judge Woodward, there was nothing except a very common and practical thought that dwells with us every day of our lives. It is no more true of corporate enterprise than it is of individual enterprise that the purpose of business is to endeavor to appropriate other people's money to ourselves. Why

does a man trade; why does he carry on any business except that he proposes by the use of his talents and of his capital to draw unto himself and make his property that which was before the property of others? That is the law of business life. It is just as true of an individual as it is of a corporation. It is just as reprehensible (if it be reprehensible) in an individual as it is in a corporation. There is no distinction. It is the same with both.

Then, outside of all this, there comes to his aid that which everywhere, and especially in a country like ours, with limited capital, so far from being a curse is an inestimable blessing. Why, only suppose that in this day of the world and in our country a learned and intelligent gentleman should get up, and addressing an assembly of learned and intelligent gentlemen should denounce the system of fire insurance, and say that it was a fraud and a wrong founded on dishonesty? What would be said of any such argument? What enables the small capitalist to have a credit to carry on his business with success except that, the people having confidence in his integrity, he may make his property secure for the protection of his creditors by resorting to the system of fire insurance? There is nothing different with reference to life insurance. By that he perpetuates, for the protection of his creditor or the benefit of his family, his talent, his industry, his ability, so that there may be a fund for the protection of those who deal with him or those who are dependent upon him if he is suddenly called away from life. There is nothing different in life insurance from that which there is in fire insurance. They are both great public benefactions; they are both vast public blessings, great public benefits, entitled to be fostered, protected, encouraged, and not legitimately the subject of denunciation.

Mr. CARTER. Mr. Chairman: I presume no intelligent man in this Convention, or out of it, doubts the great benefit that railroad corporations and railroads have been to this country; and I apprehend also that every one of us would be loth indeed to do anything injurious to their real interests. If I could believe with the gentleman who last spoke, that there was no invidious distinction now permissible between private enterprise and private capital and that of corporations, I should not favor, as I am inclined to do, the passage of this section; but it does appear to me that there is such a distinction, and I think this sec-

tion is necessary to prevent such an invidious distinction being made.

Suppose an individual, sufficiently wealthy and public-spirited, should undertake to construct a railroad from one point to another, having sufficient capital to manage it himself; would not his rolling stock be liable to seizure? Would not a debt be collected from him in a different manner from what it would be from a corporation? It strikes me so, and that this section is necessary.

It is alleged by gentlemen on the other side that it is necessary that this peculiar privilege (for it does strike me as such) should be granted to corporations on account of the great benefit they confer upon the community. I do not think that is a safe rule to apply in this matter. An individual might be running a line of stages of very great benefit, opening up and developing the country, transporting passengers from one place to another; but if a corporation or company should run a rival line of stages, they certainly would receive an advantage, unless this restriction be adopted, that the individual or private enterprise would not receive.

I may be entirely in error, but this is the simple, common sense view of the subject as it strikes me. I think no gentleman should object to proper restrictions being imposed upon these corporations. Of course railroads and fire insurance companies, and perhaps life insurance companies, are useful institutions. There is no attempt to stem the great tide of human progress in that or any other direction by this and similar restrictions; but in the progress of affairs, matters have been developed which show that certain constitutional restrictions or limitations are necessary for the protection of the people. I apprehend that all this Convention desires to do is to provide that there shall be no invidious distinctions made between private capital and private enterprise and corporate capital and corporate enterprise.

Mr. COCHRAN. I do not think this subject really needs much more argument after the very able speech which we heard from the gentleman from Philadelphia, the chairman of this committee. It seems to me that speech put the question on its true foundation, and applied to it the rule of equity which should apply in all cases where it is possible to make it applicable.

There is unquestionably and admittedly a distinction between your means of recovery of a claim against an individual

and your means of recovery against a corporation. What is the distinction? The railroad company or any corporation that stands in that relation to an individual can hold him at defiance, for this reason, if for no other: How is a small debtor, a man who has supplied this corporation with the means of its existence and with the means of carrying on its work, who has furnished it fuel for its locomotives or any other matter of that kind—how is that man to vindicate his right and to recover his indebtedness? You say he is to do it by sequestration, by proceeding with a writ of *f. fa.*, which can only operate, however, under the decisions, as a writ of sequestration. The man with a debt of twenty-five or thirty dollars is to contend against a great corporation with a capital of millions, and put those millions under a proceeding in sequestration and to have a general distribution made of the whole fund, and in no other way can he do it! How can the poor man encounter that expense? How can he meet it? Is he to be obliged to employ counsel to do all this work? Where is he to get the means of employing counsel to do a work of this character?

Sir, there is an old rule of law, *vigilantibus non dormientibus leges subveniunt*; and this principle which you apply of discrimination in favor of the corporation and against the individual is directly in contradiction of that rule of law, because where a man gets his judgment and undertakes to apply his execution against me as an individual, he levies upon my property at once, and having the first levy he takes it and satisfies himself; but he has no remedy in a case of this kind against a corporation except to go to work, and after having gone to the expense of obtaining his judgment and putting the machinery of the law in operation, he is bound to divide all its fruits with all the other creditors of the corporation.

Sir, the distinction is unjust and unfair as between the individual who sues another and the one who is compelled to claim his right from a corporation. A gentleman near me refers me to the law of domestic attachment. That is an exceptional law. It is only applied to the fugitive creditor, the man who has absconded. But, sir, the general law of the State is that where you have an execution against an individual, your execution, if it is the first, takes the property until you are satisfied. Why should it not be so in this case?

We are told of practical inconveniences that are to flow from the adoption of a principle of this kind. The simple answer to that is, let the corporation pay its debt, just as the individual pays his debt, as the gentleman from Philadelphia (Mr. Woodward) said. There is the rule. There is no reason why these men who have furnished materials for all these corporations, of whatever character they may be, and are left out in the cold while the great loan-holders are protected by mortgages piled upon mortgages, should be put to this inconvenience—that this discrimination should be made against them.

MR. MANN. Would the gentleman from York apply that principle to municipal corporations?

MR. COCHRAN. This is a report from the Committee on Private Corporations.

MR. MANN. I simply asked the gentleman if he would apply that principle of collecting debts against municipal corporations.

MR. COCHRAN. There is no reason why it should not be if they do not pay their debts; but, as I understand, this section applies to private corporations; corporations which are created for private emolument, as well as for public service, and in which the element of private emolument is made the principal consideration by those who manage the corporation. They stand on an entirely different footing from municipal corporations, and therefore the principle ought to be applied to them that these parties who are clothed with great power not possessed by an individual should be at least brought down to the same footing with natural persons. That is simply the principle of this section, view it in any way that you may.

We are told of great public benefits to be derived from the construction of railroads. No one denies that, nor doubts it. It cannot be disputed or denied. But, sir, these great public benefits ought not to be realized at the expense of private interests or individual rights. That is the point. The individual citizen of this Commonwealth has a right to be protected against its policy with regard to the protection of corporations or any other bodies which are clothed with powers that are not common to all. Every corporation which is constituted is in itself an organization which has its being in derogation of common right, and it is only because the public interest requires it that



they should exist, and when they are created they should be placed under such trammels and restrictions that they should not be able to so use their powers as that private interests should be made to suffer. On that principle I shall vote for this section.

Mr. LILLY. All this discussion appears to have very little reference to the amendment actually pending. I take it there is no man on the floor of this Convention or in the Commonwealth of Pennsylvania who does not want every corporation to pay its debts, and who does not agree that its private property should be open to levy and sale the same as the private property of an individual. Gentlemen say they want to put them on the same platform with individuals. By adopting the amendment of the gentleman from Northampton, striking out the word "franchise," you put them on exactly the same platform as individuals, in my opinion. The franchise is the right of the road to live; and yet here you propose to kill this artificial person, to take away its life, in order to pay its debts! Take its property if you please, but leave the organization for other parties who have debts contracted and other matters probably at stake on that; leave the franchise with the company.

Mr. CORBETT. I hope that neither the amendment nor the original section will be adopted. If you suffer the rolling stock of a railroad company to be sold, I do not see why you should not allow the franchise also. I do not see, Mr. Chairman, why we are asked to adopt this section. It is purely legislative in its character. The subject matter ought to be left to the Legislature in the future, and they ought to have entire control of it. Adopt it, and you tie their hands. It will then have become a part of the organic law and the Legislature cannot possibly change it. Why disturb all the principles settled with reference to this species of property by the highest courts of our State?

I feel an interest in this subject, although I am far from being a corporation man, because I come from a section of the State—the same section from which the distinguished member from Centre (Mr. Curtin) and my friend from Potter (Mr. Mann) come—where we are struggling along and doing everything in our power to build railroads. The eastern portion of the State now can probably get along without new railroads, because they already have so many in successful operation. Now what will be the effect of this

section on the companies that are struggling for an existence or struggling to complete lines which they have recently commenced? It is evident to my mind that the Pennsylvania railroad or the Reading railroad might easily afford to pay a large sum of money for the passage of this section. It will not in any way incommode them; it will not cripple them in their operations. They are already in successful operation; and what will it enable them to do if they so desire? Let me tell you. I make no charge against these corporations, or any others; but I do say that if these great companies wish to seize upon the franchises of roads that are struggling through difficulties, all they have to do is to procure a sale of the rolling stock or franchises of these struggling corporations, and they will finally get possession of them, and own them and control them. There is but little difference between seizing the franchise and seizing the rolling stock. The very moment that the rolling stock of a railroad is sold, that moment it is crippled so that it cannot do its business. It ceases effectually to become a common carrier, and its franchise necessarily must go into other hands. If it be not sold in execution, it must be sold in some other way and go into other hands, and a new corporation must be formed to carry on its business.

I hope that this whole section will be voted down. I say that it is legislation in the worst shape. I say further it is legislation against all portions of the State of Pennsylvania to-day that are without railroads. I fully concur with the remarks of my friend from Centre; and although I am really in my feelings anti-corporation, I cannot support this section. I will vote for every reasonable restriction upon corporations that I think is right; but I cannot give my vote to anything of this kind.

Mr. MACCONNELL. Mr. Chairman: I should be in favor of this section if it were necessary to insert any provision in the Constitution in order to put corporations on the same footing in regard to the payment of their debts with individuals. I cannot see, however, that any provision of this kind is necessary for that purpose. Let me illustrate by reference to a particular case or a particular set of cases that have been adjudicated by our courts.

Some quarter of a century ago a firm in Pittsburg had a very large rolling mill. They had in that mill a set, consisting I think of some twenty or thirty different

rollers, for the purpose of rolling different kinds of iron that were required for vessels. No portion of those rollers was ever on the housing, except one pair; the others were all laid aside to be used when an order should come in making their use necessary. The firm got into debt; judgments were obtained against them; and an execution was issued on a junior judgment against the personal property. Those rollers that were not in the housing were levied upon and sold as personal property. Then on an older judgment, the factory itself, the rolling mill, with the ground on which it was erected, was levied upon, sold and purchased by a different person from the one who had purchased the rollers at the first sale. The question arose, which of those purchasers took the rollers. The Supreme Court decided that those rollers, although they were not on the housing and were not in actual use, were a part of the real estate, a part of the rolling mill, and did not pass by the sale of the personal property, but did pass by the sale of the realty.

That has been followed up by a series of decisions; and the rule has never been altered, but is well settled, that where there is anything connected with a factory that is necessary for the operation of the factory, whether it is in actual use or not, whether it is actually joined to the factory at the time or not, is still a part of the realty and is to go with the realty.

If you apply that rule to railroads and to the rolling stock of railroads, you must come to the conclusion that the rolling stock is realty, because it is just as necessary to the operation of the railroad as a train of rollers is to the operation of a rolling mill. How could you operate a railroad without rolling stock? You could no more operate it than you could operate a rolling mill without rollers, no more than you could operate a carding mill without cards; and in that case the cards were held to be realty although they were not actually in use or connected with the machinery of the mill. Where is the difference?

If that rule applies to natural persons in regard to their property used in their business operations, why should it not be applied to railroads in the case of rolling stock? This strikes at railroads principally; but are they not precisely on the same footing? Why should you adopt a new rule for railroads that would put them on a different footing from that

which applies to natural persons? I can see no reason for it.

The CHAIRMAN. The question is on the amendment of the gentleman from Northampton (Mr. Brodhead) to strike out the words "the franchise."

The amendment was agreed to, there being on a division, ayes, thirty-six; noes, fifteen.

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

Mr. JOSEPH BAILY. I submit to the Chair that there was not a quorum on the last vote.

The CHAIRMAN. The Chair cannot be interrupted in putting the question. The question is on the section as amended.

The section was rejected, ayes, twenty-five, being less than a majority of a quorum.

Mr. CAMPBELL. I call for a count of the other side.

The CHAIRMAN. There was not a majority of a quorum in favor of the section. The next section will be read.

Mr. CAMPBELL. Is it not in order to call for the negative vote?

The CHAIRMAN. The section has been rejected. The sixteenth section will now be read.

The CLERK read section sixteen as follows:

SECTION 16. Any general banking law which shall be passed shall provide for the registry and countersigning by an officer of the State of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the State Treasurer for the redemption of such notes or bills.

The section was agreed to, ayes, forty-five; noes, not counted.

The seventeenth section was read as follows:

SECTION 17. No suspension of specie payments shall be permitted or sanctioned by law, and no banking or other corporation shall receive, directly or indirectly, a greater rate of interest than is allowed by law to individuals.

Mr. BROOMALL. I move to insert after the word "received," in the second line, the words "or pay," so as to read: "No banking or other corporation shall receive or pay, directly or indirectly, a greater rate of interest than is allowed by law to individuals."

I called attention yesterday, Mr. Chairman, to what I conceive to be a very considerable existing evil; and that is the absorption of the capital of the country

by corporations. The scarcity of capital, which has existed and which has interfered with individual enterprise for the last half-dozen years, may be traced to a considerable extent to the demand for capital by corporations. If the corporations were compelled to go in the market upon an equal footing with individuals, the evil would not be so great; but it is well known to every gentleman here that corporations are allowed to give for money any rate of interest that they may choose to bargain for, whereas individuals are restricted to a given, fixed rate. That is an evil. It allows to those who least need the capital, those who can best do without it, a better chance to get it than those who most need it. Individual enterprise should be fostered rather than corporate enterprise where any distinction is made. If a difference is made between the two, it should be made in favor of individuals. I believe, therefore, that we should either unchain the individual and allow him to bid in the money market upon an equal footing with the corporation, or chain down the corporation and compel it to go into the money market on an equal footing with the individual. I do not care which is done.

I have moved, therefore, to insert these words, so that any restriction you impose upon me in the money market shall be imposed upon the corporation that goes into the money market; that if it is allowed to go there without a limit upon its power to bargain, I shall be allowed to go there without a limit upon my power to bargain; that if I am controlled it shall be controlled. The reason why corporations borrow at seven and eight per cent. when individuals have to give ten or twelve, as is the case now, is because corporations can bargain in open day; they can talk to the lenders face to face, whereas individuals, being hampered by restrictive laws, are compelled to resort to a circuitous mode of borrowing, to do it through brokers, to do it secretly, and hence they have to give more for capital than corporations have to do. This is wrong; and it should be remedied, as I remarked before, by setting free the individual or by chaining down the corporation.

Mr. DALLAS. Mr. Chairman: I rise only for the purpose of saying that if the delegate from Delaware had not obtained the floor before I was able to do so, I should have offered the identical amendment which he has submitted. I concur

most heartily in every word that he has said upon this subject, and I desire only to add to what he has so well said that the evil of which he complains is not a theoretical or fanciful evil, but one which, in my humble judgment, has become in the State of Pennsylvania an evil of practical importance and of great magnitude.

We have the capital of the State of Pennsylvania sought by corporations for the purpose of carrying on business which need not necessarily be carried on under corporate franchises, but classes of business which individual enterprise, equally well fostered, may as well conduct. We give them the special power, not only of raising money by issuing securities that are particularly satisfactory to investors, but we have the Legislature constantly giving them the power of borrowing money at special rates which offer special inducements to lenders of money; and the consequence is that these corporations now go into all classes of business, from the highest to the lowest; they undertake to conduct all the business transactions of Pennsylvania for the people of the State; and no man can sustain himself in any business where the corporate finger can be placed in the pie, unless he is willing to wear the yoke of some corporation or other. It is done day after day and in all kinds of business; and unless we do provide that corporations shall not raise their capital for the purpose of conducting all manner of business, on terms more advantageous than individual enterprise can raise capital for the same purposes, we can put no check upon that which I believe to be a grievous wrong in this particular.

Mr. DODD. I wish to ask the gentleman from Philadelphia whether, if the Constitution makes any limit on persons receiving money above a certain rate, it does not by the known acceptance of the terms make it equally unlawful for any person to pay more?

Mr. DALLAS. I do not understand the Constitution to make any such provision.

Mr. DODD. Is not that the provision to which this is offered as an amendment?

Mr. DALLAS. Oh! no. The gentleman has misconceived the section under consideration, I think.

Mr. HARRY WHITE. Mr. Chairman: I have but a word to utter in connection with this section. I call the attention of the committee to the fact that it involves an exceedingly important principle. I

sympathize entirely with the amendment offered by the gentleman from Delaware, if we are to have a section of this kind in the Constitution at all. If he and I were in the Legislature and he should offer an amendment to a section of this kind in a bill, I would stand with him; indeed, I would go further and make it illegal for all banks to pay any interest on deposits, and in so doing, for the reasons which I cursorily gave yesterday, I should accomplish a public good.

I will vote for the amendment offered by the delegate from Delaware, and then I shall vote against the entire section. It occurs to me that we want no section of this kind in our Constitution. This anticipates that that will occur which none of us know will ever occur in our lifetime or in the lives of the generation to follow us. It anticipates the recurrence of specie payments. Heaven only knows; I do not, and no member of this Convention knows, when specie payment will be resumed in this State or in this Union. "Sufficient unto the day is the evil thereof." If that day never comes this section will be *brutum fulmen*; and if it ever should come, it seems to me that will needlessly tie the hands of the Legislature and prevent them from doing that which has been proved in the past to be both useful and wise.

Why, sir, in my short career, within my memory, I can recollect two or three instances in which a suspension of specie payments was legalized by the Legislature. In the great financial panic of 1857 the Executive of the Commonwealth yielded to the popular demand and convened an extraordinary session of the Legislature for the purpose of administering some remedy to the then existing business demands of the times; and then in 1857, in obedience to the universal wish of the business public of Pennsylvania, the suspension of specie payments was legalized by the Legislature, and it also enacted a stay law which saved hundreds of men, which saved industrial interests in this Commonwealth, which kept quiet the hammer of the sheriff in every county of this Commonwealth for many months, and the consequence was great advantage to the business community and great benefit to the public at large.

Then came the crisis of 1861. The great political convulsion which is so familiar to us all was attended by financial results which we all only too well remember. Again the suspension of specie payment

was legalized, and a stay law was enacted. We have suffered no evil consequences therefrom, so far as I am aware.

I hope then, Mr. Chairman, in view of the history of this subject in the past, we shall refuse to place any inexorable rule in the Constitution. The experience of our State has demonstrated that the judicious exercise of this power by the Legislature is proper for our industries, and its restraint in all after time by constitutional prohibition will be improper.

Mr. CAREY. Mr. Chairman: Being a little older than my friend White, I have lived through five suspensions—that of 1817–18, that of 1837, that of 1839, that of 1857, and that of 1860, on all of which occasions the Legislature was compelled to sanction the suspension. It had no choice. It was ruin to the community if the suspension was not legalized. Such suspensions have always come when we were blessed with British free trade. I do not think we shall have that back again, or certainly not very soon; but just so sure as it does come, we shall have then to provide for a suspension of specie payments if they shall have been resumed, which I hope will not be the case. I trust in heaven never again to see specie payments myself, and I hope there is no gentleman present who will live to see them. If, however, we shall ever resume specie payments and shall be again cursed with British free trade, we shall before very long after that need a suspension of specie payments. I pray the Convention not to tie the hands of the government in this respect.

Where, let me ask, would the country have been if in the year 1861 we had had such a provision in our Constitution, so that our banks would have been broken up and our people ruined? Where then would this State, the bulwark as it proved to be of the Union, and where would the Union itself have been? Why, sir, such a section in our Constitution in 1861 would have given success to the rebellion!

Sir, this provision is mere legislation and has no place here. We just now passed a most extraordinary section by which it is provided what we shall do when we get banks issuing circulating notes. Why, sir, the federal government has taken charge of that whole matter, and it is a subject that can never again come within the reach of the legislation of our State; and yet we are loading down the Constitution with a section

that never under any circumstances can go into action. I hope this section will be voted down.

The CHAIRMAN. The question is on the amendment of the gentleman from Delaware (Mr. Broomall.)

The amendment was agreed to.

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

Mr. MACCONNELL. I move to amend the section by striking out all after the word "no," in the first line, down to the word "no" in the second line. That is the provision in relation to the suspension of specie payments. I have no remarks to make upon it after what has been said.

The CHAIRMAN. The amendment of the gentleman from Allegheny is to strike out the words, "suspension of specie payments shall be permitted or sanctioned by law, and no." The question is on the the amendment.

The amendment was agreed to.

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

Mr. HARRY WHITE. Let it be read.

The CLERK. The section as amended reads: "No banking or other corporation shall receive or pay, directly or indirectly, a greater rate of interest than is allowed by law to individuals."

The section was agreed to, ayes forty-six, noes not counted.

The CLERK read section eighteen, as follows:

SECTION 18. The majority of the managing officers of all corporations organized under the laws of this State shall be citizens of the State.

Mr. LILLY. Mr. Chairman: I am opposed to this section, as I think every member will be when he comes to reflect upon what it is. Let us take, for instance, the county of Somerset. Suppose that there a vein of iron ore is discovered, and citizens of Maryland come into Somerset county and purchase the land containing that iron ore, erect machinery to take it out of the earth, and get up a corporation under the laws of Pennsylvania for that purpose. There may not be a man in Pennsylvania interested in that corporation. It brings foreign capital into the State to develop our resources. Now you propose to say that a majority of the directors of that corporation shall be citizens of Pennsylvania. I cannot see any good in that whatever. It only has the effect to keep out of the State capital that would otherwise come in to develop our resources. We have already provided

that such corporations must keep an office in this State, or have an agent here upon whom process can be served. That is right and proper; but to say that a majority of the managers shall reside in the State of Pennsylvania, when perhaps no Pennsylvanian owns a dollar's worth of the stock, is certainly unwise. I think it will strike every member of the Convention in that light. I hope no such restriction will be imposed.

The CHAIRMAN. The question is upon the section.

The section was rejected.

The nineteenth section was read, as follows:

SECTION 19. All insurance companies incorporated by other States and doing business in this State shall be subject to the same rate and measure of taxation as similar companies incorporated by this State.

The section was agreed to.

The twentieth section was read, as follows:

SECTION 20. No building or loan association or similar organization shall be permitted or established which does not provide in its charter for publication, at stated periods, of the names of all shareholders, the number of shares held by each, and the amount of money paid in, and the number of shares borrowed upon and by whom received.

Mr. WORRELL. I should like to ask the Chairman of the Committee on Corporations the purpose of this section.

Mr. WOODWARD. I will observe that my friend from Montgomery (Mr. Corson) is the responsible father of this section, and I refer the gentleman to him.

Mr. CORSON. Mr. Chairman: In the limited time allowed me before this Convention will adjourn, I will endeavor to state briefly the purposes of this section.

SEVERAL DELEGATES. You have an hour and a quarter.

Mr. CORSON. I perceive that I have only an hour and a quarter, and I will endeavor in that time to state briefly the reasons which operated with the committee in bringing forth this important amendment of the Constitution of Pennsylvania. [Laughter.]

The abuses which have cursed the State of Pennsylvania and the county of Montgomery in the administration of these building and loan associations, which in themselves are institutions calculated to do great good to the community, have become so great that the committee was

compelled to take notice of them, and to bring to this Convention a proposition calculated to prevent them in the future. The attention of the committee was called to an editorial in the *Philadelphia Ledger*, which exposed the manipulations of certain officers of corporations of this character in the city of Philadelphia. It seems that by a careful management, men having control of these building and loan associations can borrow out all the money that they gather in from the poor people, who place in their hands the earnings of their families, and upon doubtful security get the money, use it to speculate upon, and nobody knows where it is or who is the actual borrower.

Another abuse is this: To-day, by the system as it prevails in the rural districts of Pennsylvania, a man may get into his hands a sum of twenty thousand dollars, the earnings of minors and of widows and of laboring men; he represents to them that they have so many shares of stock; but they have no means of knowing; their time is employed during the day and sometimes during the night in the mills and manufactories; they never have any opportunity to examine the books; a large number of them are incompetent to make such an examination. One man may have \$20,000 of this money in his hands, and these shareholders will not know where it is. The constitutional provision which we have here will require that no charter shall be granted to any such organization which does not require a publication at stated periods of the names of the shareholders and the names of those who borrow. That would protect the people. There is no protection now.

These associations are chartered by the courts. A number of people are called together by some speculator into some office, and he tells them that he will get them a charter for a building and loan association. He goes into court, and the charter is obtained. There is nothing which requires any publication of the names of any of the parties who pay in their money; and I could cite instances, if I desired to do so, where money, to the extent of \$10,000, of the hard-working people of a town in this State, was paid into the hands of one man, and never one farthing was appropriated according to the direction of the payers; but it was pocketed until the discovery was made, and, fortunately, it was made whilst the man was in circumstances sufficiently strong

to be able to make up the deficit and pay over the money according to the original intention; but it was because of no salutary measure in any law that those people were saved; it was in spite of that, and in spite of the fact that there was no constitutional protection to these people that they were saved; it was by a mere accident. It was discovered that an officer of one of these corporations had not paid over the sum of \$500, which he had collected for a woman where she had a pass-book in which he had signed his name; and when that discovery was made it led to an investigation, and that investigation disclosed the startling fact that this man had in his hands a sum reaching to \$14,000 of the money of the hard-working poor people of one town, which never had been appropriated according to the articles of incorporation. This section 20 would prevent all that, because the citizens of the town would read in their county papers exactly who were the shareholders, and where the money had been invested. This publication need not be made every day; it need not be made every week; but read the section, and see how carefully it is worded:

"No building or loan association or similar organization shall be permitted or established, which does not provide in its charter for publication at stated periods of the names of all shareholders, the number of shares held by each, and the amount of money paid in, and the number of shares borrowed upon and by whom received."

There is in that section protection to the people of the Commonwealth. They pick up the papers and find their names are not printed; they go immediately to the party to whom they paid the money, and demand an explanation. Immediately the money is paid over and the name is inserted in the published lists; but to-day there is no means by which a shareholder can understand whether or not his money has been paid in, except by the employment of a lawyer, and the appointment of a committee to make the examination and overhauling of all the books, which may take a period of six months.

Mr. BARTHOLOMEW. I move to strike out after the word "publication," in the third line, the words "at stated periods" and insert the word "annually." I think the words "at stated periods" are too indefinite.

Mr. WORRELL. Mr. Chairman: I desire to say a word or two with regard to

the section, but not especially with regard to the pending amendment. I will say to the delegate from Montgomery that he does not seem to understand the workings and management of building associations.

Mr. CORSON. Where? Here?

Mr. WORRELL. Anywhere. This section is not needed at all, and nearly all the information which the section provides for is now given regularly by the various associations under the law as it exists in this State. Section four of the act relative to building associations, to be found in Purdon's Digest, provides:

"That the said officers shall hold stated meetings, at which the money in the treasury, if over two hundred dollars, shall be offered for loan in open meeting, and the stockholder who shall bid the highest premium for the preference or priority of loan shall be entitled to receive a loan of \$200 for each share of stock held by the subscriber."

That furnishes the information as to the parties who are the borrowers from the association, and there can be no purpose in publishing at stated periods the names of the stockholders and the names of the parties who have borrowed from the association.

Mr. CORSON. I ask the gentleman this question, how the amount offered on the evening of the meeting for loan shows whether or not the \$200 paid by Mary Smith to John Jones has been received by the association?

Mr. WORRELL. That information would not be received under the section reported by this committee. But the purchase in open meeting by a stockholder who desired to borrow upon the shares of stock he held in the association would give notice to everybody interested. It would give to all those interested, and to all those who ought to know, information as to who are the parties borrowing from the association. These associations are mutual associations. No one goes into them unless he desires to do so. He joins as a voluntary stockholder. The associations are managed by directors selected by the stockholders; and there can be no set of directors, no set of men who can manage the funds of the association against the wishes and desires of the stockholders, because they elect their board of directors annually, and they organize and perform the duties which are designated in the charter as granted by the courts.

There is no necessity of saying to the world who are the stockholders, the share-

holders of these associations; and it is not necessary for any public purpose or for the good management of these associations that it should be published to the world who are the borrowers from the association. In very many instances the parties do not desire that those outside shall know whether they are borrowing money or not; and that is one reason why these associations are set up. They are mutual in their transactions, and this information cannot be received, and ought not to be received, unless it is given voluntarily by the parties who are borrowers of money.

This requirement will entail a very great expense on the associations; it will be an expense upon the shareholders. This annual exhibit of the names of the stockholders and how many shares they hold, and how many shares have been borrowed upon and by whom, will entail a large expense for printing which will materially decrease the profits of the associations. All the information that is essential is given by the board of directors. There are regular stated publications of the number of shares in each series, the amount of money paid in upon each share in the series, the value of the shares, the number of the stockholders, and the number of shares upon which loans have been received; and that information is a basis on which a calculation can be made as to the condition of the association.

This is not demanded by any public necessity, and is not demanded by the stockholders of these associations. There are in this city many hundreds of these associations, and there never has been a general complaint as to their management. In the one single instance to which the gentleman referred, in which the officers of the association mismanaged the funds, it became a matter of judicial investigation, and those parties were convicted, I think, in the court of quarter sessions. That is but one instance in a very long period of time with regard to the many hundred associations in this city. I trust this section will not be adopted.

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

"Provided, That this legislation shall apply only to the city of Philadelphia and the county of Montgomery." [Laughter.]

Mr. CUYLER. I move to amend the amendment, by striking out "the city of Philadelphia." [Laughter.]

**Mr. CORSON.** Mr. Chairman: The gentleman from Philadelphia (Mr. Worrell) who stated that I did not know anything about the workings of these building and loan associations, showed very clearly, before he got through, that he did know how to evade a question, and that he did not know anything at all about building and loan associations if he knows anything about any associations. [Laughter.]

The CHAIRMAN. The gentleman will be kind enough to confine his remarks to the amendment of the delegate from Venango (Mr. Beebe.)

**Mr. D. W. PATTERSON.** I should like to ask the gentleman from Montgomery a question.

**Mr. CORSON.** Certainly.

**Mr. D. W. PATTERSON.** Has the gentleman from Montgomery ever been a shareholder in one of these building associations?

**Mr. CORSON.** I am now.

**Mr. D. W. PATTERSON.** I thought from the member's remarks he had never known anything about them. [Laughter.]

**Mr. CORSON.** I am now. I am not voluntarily so. I was compelled, to save myself, to buy a property which was mortgaged to one of these accursed institutions, and I have to pay in there so much a week till I get rid of that nuisance. [Laughter.] But I allude to the abuses; I say that the fact that the officers may at stated periods offer so much to loan does not give any publicity to the fact that my friend Mr. Cuyler paid into the association the five hundred dollars for me that I paid him. That is the question I asked the gentleman from Philadelphia, and he declined to answer it, because he could not answer it. No man can answer it.

**Mr. WORRELL.** I did answer the question.

The CHAIRMAN. The gentleman from Philadelphia is not in order, and must not interrupt a gentleman on the floor.

**Mr. WORRELL.** I rise to make an explanation. I said to the gentleman that out of the many hundred associations in this city, there had never been but one single instance of defalcation, and he cannot point to a second.

**Mr. CORSON.** That is not an answer. That has nothing to do with the question. [Laughter.]

I propose that these people shall make an exhibit of the amount of money paid

into the different associations, and that they shall publish this statement, my friend from Schuylkill says, "annually," it should be monthly: but I am willing that that should go to the Legislature.

The industrial interests of this country require that the laboring people shall be employed during the day. Those people who labor with their hands and bodies all day have no time or strength to go into a committee room at night and rummage over the records of a lot of building and loan associations to see whether or not their money has been paid in, and unless publication is made they never can know. Many of these people cannot read or write. They give their money with implicit confidence into the hands of some man who is running the institution, and unless publication made they never know what becomes of their money. Now, you take an association here, in the city of Philadelphia, where there are one thousand five hundred shareholders, all of them poor people, paying in five or ten dollars per week—depending upon the number of shares they have—and what protection have they? Summon them together! Imagine a spectacle when a development of this kind should be made. A notice is published in the public newspapers. A mass meeting of men, women and minors assemble. With uplifted hands they bear their pass-books to the presiding officer. If any payment to a custodian shall not have been appropriated according to the intention of the shareholder, with what startling tremor the industrious masses move together in fear and solicitude at the thought that their earnings are in peril of being lost! Had we such a provision as this in the Constitution of Pennsylvania, such a scene could never be witnessed; and unless we put some such section into positive law, will anything prevent the recurrence of troubles like these in the future? Here is the provision now reported to be placed in that Constitution. If you strike it out, you strike at the earnings of the poor people of the State.

**Mr. BARTHOLOMEW.** I offered my amendment simply because I deemed that the section needed some such provision to make it complete. It provided for publication without requiring when publication should be had, and I therefore moved an amendment to make it annually. The gentleman who framed the section says that



the Legislature can take charge of that. I think the Legislature had better take charge of this whole subject, and I shall oppose the whole section.

The CHAIRMAN. The question is on the amendment of the gentleman from Venango (Mr. Beebe) to the amendment.

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Schuylkill (Mr. Bartholomew.)

The amendment was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. BAKER. Let it be read.

The CLERK read as follows :

No building or loan association or similar organization shall be permitted or established which does not provide in its charter for publication, at stated periods, of the names of all shareholders, the number of shares held by each, and the amount of money paid in, and the number of shares borrowed upon and by whom received.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows :

SECTION 21. Any number of persons, upon making such publication as the Legislature may by general law prescribe, may associate themselves together for business purposes, with several liabilities proportionate only to their individual investments.

Mr. CAREY. This section has nothing in it but legislation. It has no business in the Constitution. If the Committee on Private Corporations had given us a declaration, or something like a declaration, of the right of the people to associate in this fashion, then it might have found a place in the Constitution. But as it is, it seems to me it is good for nothing and might as well be voted down.

Mr. C. A. BLACK. It is the law already.

Mr. CAREY. I was in hopes that the Committee on Private Corporations would give us something like a declaration of the right of the people to associate together in the fashion in which it is now done, but as the section stands, it is good for nothing.

Mr. CUYLER. I do not know that.

Mr. WOODWARD. I am a little surprised at the position of my venerable friend (Mr. Carey) because this section was put into this report at his instance. [Laughter.] He himself drew this section or it was submitted to him when

drawn and he approved it, and we put it into the report at his instance. Now I understand him to be opposed to it.

Mr. CAREY. I had some conversation with the Committee on Private Corporations the day before they made their report, in which I urged exactly what I have said now; that what was needed was a declaration of the right of the people to associate. I was urged to draw up what I thought to be necessary and I said that it would be useless for me to attempt it without knowing something of the character of the chapter they were to report because it was necessary that all the different parts should be in harmony. One of the members of the committee wrote this and handed it to me. I told him "very well, let it be so, but I consider it good for nothing." [Laughter.] "Let it stand and put it in the Constitution if you will, but it will be powerless." I had hoped that they would have done what I said ought to have been done, but that they did not do. Now I am chairman of the Committee on Labor and Industrial Interests, and I propose to make a report on this subject, but I have delayed it in order to see what course would be taken by the other committee. When that report shall be written, which will be before long, I hope that the members of it will unite with me in reporting a section, in reference to this question, that may properly find a place in the Constitution. I want to put in there a declaration of the right of the people to associate to do business with one another and with the public at large, on such terms of limited or unlimited liability as they may select, provided simply that the Legislature shall give perfect publicity to their course of action. Perhaps you may have such a thing reported some of these days. In the meantime pass this if you will, but I consider it good for nothing.

Mr. D. N. WHITE. What is the use of passing it then?

Mr. WOODWARD. The recollection of myself and my friend from Philadelphia is substantially alike. The gentleman appeared before our Committee on Private Corporations and advocated his views. He persuaded us that they were sound, and we asked him to reduce them to writing, which he either neglected or declined to do. But my friend from Montgomery county, (Mr. Corson,) who is a member of the Committee on Private Corporations, drew up a section in pur-

suance of the ideas given by my venerable friend, submitted it to him, and reported to the committee that he approved of it entirely. Therefore we present this section.

The venerable father of this Convention inspired this section and I, sir, stand here to say that it was worthy of him. You talk about this being legislation. That has been the stereotyped objection to every constitutional amendment that has been proposed since this Convention met. In some sense it is legislation; but if we are to effect any reforms at all, we must do it here, in this body, and not refer them to the Legislature because our experience teaches us that they will not effect anything.

What is the principle of this amendment? It is exactly the principle which has been adopted in two statutes of the British Parliament which my friend was good enough to give us on the occasion to which I allude; exactly the principle under which capital and labor have harmoniously associated in England and are now in co-operation there in innumerable instances, greatly to the advantage of the industry of the country and of the capital of the country; exactly the principle upon which such co-operative associations have been framed in New England, especially in Rhode Island and Massachusetts, retaining capital there and employing it profitably in all forms of industry, giving to the laborer an interest in the earnings of this capital, and making him liable for the debts of the company to the full extent of the interest which he has in it, and reconciling that difference between capital and labor which has always existed and which will always exist, by uniting them in the production of valuable industry for the community.

That is the principle upon which Rhode Island, formerly one of the poorest little States of this Union, is to-day one of the richest, the principle by which Massachusetts has become wealthy and accumulated an amount of capital altogether beyond the proportion which, in population, she bears to the other States. They have everything incorporated there. Their fishing smacks, and factories, great and small, are incorporated. All forms of property are incorporated, and in all forms of industry the laborer participates in the profits with the capitalist. As the business increases and becomes more and more profitable, he can invest more and more

of his earnings in the concern and thus deepen and increase his own interest, and secure a better production, and thus avoid the "strikes" which are so common here in Pennsylvania. Take the case of coal mining in Pennsylvania, which is an enormous interest, and see the effect of a strike which depends now upon the passions of the laborer. It deranges the business of a whole community, producing distress in all directions. Is it not desirable to avoid such occurrences as these? Give the laborers an interest in the profits which the capital is earning, and you avoid these strikes. You secure better and more loyal labor. You reconcile, in a word, that difference which has existed and which probably will always exist between capital and labor.

Mr. CORBETT. If the gentleman from Philadelphia will allow me to interrupt him; does this section mean anything more than a joint stock company? If it does not, and you get a judgment, how can you have execution on the several liabilities?

Mr. WOODWARD. You could not have a judgment and execution under this section, but you could have your bill in equity against each stockholder, who would be liable for the debts of the company to the extent of the stock which he holds. You could not proceed at law, but you could proceed in equity, and you could bring an account against each stockholder to the extent of his liability, and in that form marshal the assets of the corporation. I think that is a sufficient answer to my friend from Clarion.

Mr. CUYLER. I do not think that is what the gentleman from Clarion means. What he desires to know is whether, under this section, there is not individual liability, but corporate liability.

Mr. WOODWARD. There is individual liability.

Mr. CUYLER. There is not individual liability, as I understand it.

Mr. WOODWARD. I am told that there is no individual liability here; but I mistake this language if that remark be correct. The section says: "Any number of persons, upon making such publication as the Legislature may by general law prescribe, may associate themselves together for business purposes, with several liabilities proportionate only to their individual investments." What is that but individual liability.

Mr. CUYLER. "With several liabilities proportionate to their several invest-

ments." It is therefore the investment that is liable, and not the individual. That is not a liability of the individual for a debt of the company, but, as I understand the section, it is only a liability of the stockholder to the company in whose stock he has subscribed.

Mr. WOODWARD. In that sense I assent to what the gentleman says, that the individual stockholder is liable to the extent of the investment he has put in the concern.

Mr. CUYLER. That is all the loss he can make. He is not liable to the claims that may be brought by outside parties.

Mr. WOODWARD. His subscription might not be paid in, and he would be liable to make it up.

Mr. CUYLER. The liability would be to the corporation, not to the creditors.

Mr. WOODWARD. Mr. Chairman: I have said all that I desire. I care nothing about this section. I have stated to the Convention that it was inspired by the gentleman himself (Mr. Carey;) it was shown him and he approved it. He convinced us that it was wise, and therefore it was brought by our committee into the Convention. If he can now convince the Convention that it is otherwise, I hope that we shall reject it.

Mr. CAREY. At the time I saw the paper brought me by the delegate from Montgomery, (Mr. Corson,) this liability, that I understand I am supposed to be the father of, was not in it. If it does not mean that I have mis-read it. This is the same liability that we voted down yesterday, the liability of stockholders for the debts of the concern in proportion to their investment; and if the chairman of the Committee on Private Corporations (Mr. Woodward) does not mean that, I mistook him.

But now they begin to read it that it does not mean individual liability for the debts of a concern. Well, we voted that down yesterday, and for the reason that it has been the law upon our statute books for the past twenty years, and that that law prevents the formation of associations under it. It has been a dead letter. It has compelled us to resort to the Legislature for acts of incorporation, and has been the direct cause of nine-tenths of the corruption we have had in the Legislature.

When I first saw that paper which was brought to me—I was just leaving and I read it hastily—that liability, I am sure, was not there. If I had seen that liability

there, and understood it as I understand it now, I should certainly have protested against it. This section is not the one that I saw. Now, if it does mean that there is to be liability on the part of the shareholders for the debts of the company, in proportion to the capital they have invested, this is exactly what we voted down yesterday, and what public opinion has voted down by compelling the Legislature to adopt a system almost identical with the one I have suggested.

However, if gentlemen want to let it stand and be placed in the Constitution, let it be so. It will amount to nothing.

Mr. HARRY WHITE. I will merely add a word to what has been said by the delegate from Philadelphia (Mr. Carey.) This section, if passed, will create some confusion in our revenue laws. I recollect at the session of 1871, when there was a strike in the mining regions, I had the honor, as a member of the Senate, to introduce, at the instance of a large manufacturing establishment in this State, an act authorizing the formation of industrial partnerships, which was designed to legalize in Pennsylvania the formation of partnerships upon the principle of the large industrial enterprise in Manchester—I do not recall the name of it—wherein they seek to set at rest the disturbance between capital and labor by providing in their arrangements that, after setting apart, say ten per cent. of the earnings, or probably twelve per cent., the operatives shall be entitled to a proportionate share of the receipts of the establishment over and above that. In that way they make them partners in the industrial enterprise, and substantially and personally interested in its prosperity.

That statute was passed and is to-day the law. It is not as perfect as it should be because it interferes, one feature of it at all events, with our revenue law. Gentlemen know very well that a large element, more than half a million, of our revenue, is derived from the taxation of dividends and net earnings and other profits of corporations. Now if you pass this section you interfere with that, which is already the general law. You also interfere with the general course of our revenue in this regard and create some conflict.

It seems to me, in view of all these things, that it is entirely unnecessary to encumber our Constitution with this provision. Trust to the Legislature. The Legislature will answer a popular demand

for a general statute, meeting all these difficulties.

Mr. T. H. B. PATTERSON. Before the vote is taken, I merely wish to call the attention of the committee of the whole to the forty-fifth and forty-sixth lines of section ten of the article already adopted on legislation, which provides against creating corporations "by local or special acts," which of course would render it necessary for the Legislature of Pennsylvania, immediately on the adoption of the Constitution, to take proper steps to so modify the general laws in regard to corporations and associations of that character and extend them as to cover the ground which the people desire; and certainly, such being the course which it would be necessary for the Legislature to take, we might readily remit this important change to them, because our present action on legislation prevents all further local or special acts of incorporation, and therefore would direct the attention of the members of the Legislature and the people of the whole State to the adoption of a statute which would incorporate the principles of the section. I am therefore opposed to the section here.

Mr. J. PRICE WETHERILL. I heartily agree with what has been said in reference to this section, believing that no liability and no restriction should be placed on parties desiring to associate themselves for business purposes; but in order that there may be no mistake about the words "proportionate only," I move to amend by striking out those words in lines three and four and inserting "limited," so as to make the meaning of the section clear. Then the section will read, "for business purposes, with several liabilities limited to their individual investments;" and at the same time strike out in line three the word "several," to make it still more clear. Then it will read, "the liabilities limited only to their individual investments." That would make it free, so that all parties who desired to co-operate for business purposes could do so without restriction.

Mr. CORSON. Mr. Chairman: Since the action of the Committee on Private Corporations has been referred to, I will just state that the gentleman from Philadelphia (Mr. Carey) met the committee and expressed his views at length, and when he had concluded his remarks I drew up what seemed to be an embodiment of his views and ran out and submitted it to him before he left this building. He said that

seemed to express the idea. I then returned with it to the committee, and the whole committee, when it was read, seemed to think that it expressed the idea as they gathered it from his remarks, and it was unanimously adopted, and it was the last thing that was adopted by that committee; and as everything else has been voted down I suppose that will be too; but it may be possible that we did not get the idea. I think the words now proposed to be introduced by the gentleman from Philadelphia (Mr. J. Price Wetherill) do express the idea more clearly than the words I employed, because what I wrote was written in a hurry; we had not given that branch of the subject any thought before that moment, and our attention was called to it by the distinguished gentleman from Philadelphia (Mr. Carey.) He inspired this section, and I wrote it, and the committee adopted it, and now it is before the committee of the whole.

Mr. BUCKALEW. Mr. Chairman: I know the committee are impatient for a vote, but I wish to say a few words. I am opposed, for one, to this proposition, independent of the time and manner in which it is produced. We have a large number of laws in our State which make provision for individual liability, especially in relation to coal companies and iron companies and various associations employing large numbers of laborers. In their charters and in supplements to their charters we have provisions of this kind: That the corporators shall be individually liable for all the wages of labor and for produce and supplies furnished to them in their business, exempting them from individual liability for their loans and for demands in the nature of loans that are always in favor of large capitalists, who are capable of taking care of themselves.

I say on behalf of the people of our State that the principle is just which discriminates as to liability between capitalists and wealthy men who are able to take care of themselves and do take care of themselves, in making loans to these companies, and the laborers employed by them by the day, or week, or month, or year if you please, and the people of the country in which their operations are conducted that sell them supplies to carry on their operations. I say that when an association of wealthy men choose to make an experiment of this kind in business they ought not to take all the profits if it succeeds, and if it fails throw the whole loss of their expenditure on the

people of the locality where they carry on their business.

For the present, therefore, without entering into the general debate, I am against putting this provision into the Constitution, which declares that men of capital in this State forever, with reference to all kinds of business, because there is no limitation upon it, can put a certain amount of money into an experiment and shall not be liable to respond to any human being in case the experiment fails. They can never suffer any loss beyond the actual amount of money which they have invested.

I agree that the Legislature, by careful statutes, limited in their operation, confined to certain sorts of business, may introduce this principle of limited liability in the organization of certain corporate bodies; but to put here into the Constitution an unlimited provision applying to every imaginable sort of business in all time is monstrously imprudent; and as I understand its effect and operation on the people of the State, especially upon the humbler classes of the people of the State who are obliged to deal with these companies and are obliged to be employed by them, it is in addition rankly unjust.

It seems that the chairman of the Committee on Industrial Interests has, to use the language of the chairman of the committee reporting this article, "inspired" this section. Well, sir, if he inspired it originally he chooses now to withdraw his inspiration, and I take it for granted that his suggestion is a reasonable one, that in due time he will present to us his views on these industrial questions so far as the organization of companies is concerned; he will present them in form for our consideration; and until that time, I hope we shall not take action.

Mr. J. PRICE WETHERILL. It is very true that the section is liable to the objection urged by the gentleman from Columbia; but yet, on the other hand, if I desire to invest in a company ten thousand dollars and know that I thereby will be liable to the amount of twenty thousand dollars, what is the consequence? The consequence is that upon an investigation in regard to the liability incurred I decline to run the risk. Therefore, following out that idea, the consequence is that capital is not associated, and therefore companies are not formed, and therefore the business is that way left undone, and therefore other States, with laws allowing greater freedom, do the business. That is just the

working of the restriction as I understand it, that you so cripple and tie the hands of capitalists that they do not care to associate capital together because they run a risk of double the amount of the amount they desired to invest.

On the other hand, if a company is formed with a capital of one hundred thousand dollars to, if you please, develop a certain coal property in a mining county, and ten men put in ten thousand dollars, knowing very well that that is all the risk they run, how easy it is to frame a law that a certain amount of property, the result of that investment of one hundred thousand dollars, shall be bound for the wages of workmen, shall be bound for the supplies needed; and thereby to the extent of one hundred thousand dollars will the workmen and will the parties supplying materials be secured. Is not that all the security that is required? Is it right that when one hundred thousand dollars is contributed to form a company, and thereby property put into that company ample and sufficient for all its intents and all its purposes, fully ample for the two items of labor and supplies, simply because some parties think it not sufficient, we should by law require double the amount. It does seem to me utterly unreasonable.

It is true this restriction now exists; but it is a restriction which I have never heard of being enforced. I know very well of companies formed in some of the mining counties of this State that have not been successful, and yet I never heard of workmen being compelled to come upon the stockholders of the company for wages. There always has been, if I am rightly informed, personal property around the improvement by which the miners or the workmen or the men furnishing supplies could be secured. You are putting upon the operative an unnecessary amount of security, a security which I believe he does not demand, and in doing so you are driving out capital from the State and you are preventing the proper association of capital whereby the mineral and other industries of the State may be developed.

I hope therefore that the amendment which I have offered will prevail, and I do hope that we shall sanction the idea which is so free and so liberal and so proper for a great State like this, that capital can be associated without any limit other than the amount invested.

The amendment was rejected; ayes thirty; not a majority of a quorum.

Mr. GOWEN. I move to amend the section by inserting after the word "together," in the third line, the words "as a corporation," and to strike out all after the word "purposes" in the same line and insert "without any individual liability on the part of the stockholders."

The object of the amendment is to permit any number of persons, whenever they may please, subject to such rules as may be prescribed by the Legislature, to associate for business purposes, without any individual liability whatever. When I hear a gentleman on the floor of this House say that the protection of labor requires that there should be individual liability on the part of the stockholder, it strikes me that he knows very little on the subject. I grant that it is perfectly proper and right to protect labor by making the wages of labor a lien upon the property of the corporation; but if you make the individual stockholder liable, you prevent the individual stockholder from putting his money into any purpose of the kind. The greatest protection that labor can have in this State is to have the door open so that money shall come into the State to develop its industrial resources. Make the wages of labor a lien upon the property of the corporation, but do not attach any individual liability.

In England they have a system of limited liability, which is practically no liability at all, and since that has been in vogue in England the wages of labor have risen 100 per cent., and such a thing as a laboring man being unpaid is unknown. And since we have had our system of legislation whereby the wages of labor are made a lien on the property of the corporation, such a thing as an unpaid laboring man is practically unknown in the State of Pennsylvania. There are large interests which must be developed. There may be one particular corporation or one particular object to be accomplished that will take a million of dollars to develop it. It may employ a thousand men. No one individual will put a million dollars into one risk, because every man who has accumulated a million of dollars has passed that period of life at which he wants to risk anything, but you can get a thousand men to put a thousand dollars each into an enterprise, and the aggregate capital will employ a thousand men, and the property held by that aggregated capital is responsible for the wages of the la-

bor, and a million dollars' worth of property will always pay the wages of a thousand men for a month.

In the coal region of Pennsylvania the trouble about the payment of the wages of labor has been greater, I apprehend, than in any other part; and since the act of Assembly which made the wages of labor a lien upon the property of the corporation, I do not believe that in any case of failure, (and there have been hundreds and thousands,) the laboring men have ever gone without being paid; that is, up to the limit which the law protected them in, which I believe is \$100 a piece. Make the wages of labor a lien on all the property of the corporation, make it a first lien, prevent any other lien taking precedence of it, and let every other man who lends money to that corporation at any time, whether it owes wages or not, lend it with the knowledge that wages at any time will acquire a first lien upon the property of the corporation.

Mr. BUCKALEW. I should like to ask the gentleman a question with his permission.

Mr. GOWEN. Certainly.

Mr. BUCKALEW. Take his own illustration. A company buys coal lands, and executes a mortgage for them to the vendor, does he mean to say that the wages of labor which that corporation may owe afterwards would be a first lien?

Mr. GOWEN. No, it would not now as the law stands, and it ought not to be with reference to the purchase money of lands.

Mr. BUCKALEW. I want to know whether there would not be a complete opportunity to evade all the provisions with regard to the first lien, unless you admit the same principle which would apply in the case that I have mentioned?

Mr. GOWEN. If a man buys a tract of land and gives a mortgage for the purchase money, up to that time he has required no labor; he has made use of no labor to give value to that land; but if he opens a coal mine upon it, he has to have ten, twenty or thirty thousand dollars of personal property around there, which is always liable to the first lien of the laboring men; and with a great deal of experience on this subject as a lawyer in the coal regions, I know that it is almost invariably the case that the proceeds of a sheriff's sale of a colliery have been sufficient to pay the working men of the colliery. I cannot recall a single instance in which any laboring man ever derived any

benefit from the personal liability of a stockholder.

Personal liability on the part of a stockholder beyond the amount of money he invests in a concern will drive people away from such an investment. In the State of Connecticut I believe there is absolutely no personal liability at all. Any one, two or three persons can associate themselves as a corporation for business purposes without any subsequently accruing personal liability resulting from the action of the managers of that company; and I believe in no State of this Union are there so many prosperous and successful corporations, and in no State in this Union are the laboring men so well and so promptly paid as they are in the State of Connecticut. The principle to be enforced is this: Throw open the door to all the capital that will come into the State without any personal liability on the part of the party who sends it here; make the property of the corporation liable for the wages of labor; remove the personal liability, and you will have such a development of the industrial interests of this State as will secure the best protection to the laboring man.

Mr. BARTHOLOMEW. I desire to say a word or two on this question, as I think it directly interests the district in which I live. I think the gentleman from Philadelphia, who last addressed the committee, is a little at fault in his memory about cases in which the wages of labor have not been paid. I was interested myself in a case in the Supreme Court a year ago in which that contingency arose, and I can conceive that it is likely to arise in very many cases in the mining regions. Mining property is wholly different from almost any other kind of property. If a bushel of oats brings but sixty-five cents, it does not depreciate the value of the farm land upon which it grew; but if coal brings less than its cost of production, it does depreciate the mine, and it becomes worthless, because the more you work it, the more money you lose; you lose it continuously and rapidly, and therefore its value falls at once. I have known in my experience in the county of Schuylkill, mining property which in the cost of its erection and construction involved the expenditure of thousands of dollars—to be within a reasonable limit I will say \$100,000—and I have seen that property sold at sheriff's sale under the hammer for not more than perhaps \$100. That has been frequently the case in the county of

Schuylkill when coal was bringing less than its cost of production.

There is another matter that I desire to refer to in this connection. A system or practice has grown up in the coal regions—it has been sustained in the court of common pleas of our district, but it has not been passed upon by the Supreme Court, and I do not know whether it will be sustained or not—under an act of Assembly, passed in 1872, increasing the amount of preferred wages to two hundred dollars for each laborer. With five hundred men working at a colliery, that makes a considerable amount of money. This preference is for wages that have accrued within six months, and they have pursued a policy of borrowing money upon the faith of the assignment of the wages of labor; that is, a party who has money pays off the pay-roll for the month and takes an assignment of the wages of labor as his security; and so two or three months of wages may accumulate,

It is true that the limit to each individual is fixed by act of Assembly, but there may be many different individuals who will go into the works and work perhaps for a month or two until their wages amount to \$200 and then leave and new hands come in, until the wages of labor assume a very large figure. Therefore, in times of distress, in times when the product of the mine is bringing much less than the cost of production, the mine itself will bring but a very small amount at a sale in comparison with its real value, and in such cases it has frequently occurred in the history of Schuylkill county that these acts of Assembly of 1856 and 1862 and now of 1872, have been incapable of protecting the wages of labor, because the property sold for a sum which was not sufficient to pay the wages of labor. This thing can occur again.

Therefore, for the reasons urged by the gentleman from Columbia, (Mr. Buckalew,) I think this section should be voted down because it does strike at that protection and that preference for the wages of labor which has been a principle that has been adhered to in the legislation of this State for many years, and which is one that I deem to be proper and right, and one which should not be stricken down, at least in this Convention, because, it seems to me, the protection of the wages of labor is the very first and most important duty that we have.

Mr. BIGLER. Mr. Chairman: This is a subject of very considerable interest. If

my recollection serves me aright, the general manufacturing law of the State at this time imposes individual liability for labor and materials. Certain I am that it imposes individual liability upon the stockholders for labor. I have long been of opinion that the very best restriction that could be placed upon corporations would be to forbid liability; in other words, to impose the cash system. Wages should be paid at very short periods, and the materials should be paid for in cash.

Very recently I took some part in an organization under the general law as it now stands, and I encountered some of the sensitiveness referred to by the distinguished gentleman from the city (Mr. Gowen.) There is a class of capitalists who are very sensitive upon the subject of individual liability of any kind, and they are unwilling to take an interest even in a very proper and valuable enterprise if that principle is incorporated. In the instance to which I refer, we overcame that entirely by a by-law which forbade the creation of debt for labor or for materials. We relieved all that sensibility by requiring that the laborer should be paid in cash promptly, and that all the material should be paid for in like manner.

Now, a liability, or, if you please, a lien for labor is a very slow remedy to the needy laborer. It will take him some time to realize his wages, which he may need. ["Ten days."] That is more prompt than I had supposed. But I am unwilling, for one, to yield this general principle which is so widely applied, and which, I think, has exercised a very wholesome influence, unless some other remedy, such as I have suggested, be applied. The laborer ought to be protected just as far as it is possible to go, if you allow a corporation to create debts for labor. My judgment is that at restriction which would forbid it, which in some form would require prompt payment for labor as well as material, would not only subserve the interests of corporations but subserve the interests of the people.

The CHAIRMAN. The question is on the amendment.

The amendment was rejected.

SEVERAL DELEGATES. Question on the section!

Mr. CUYLER. Mr. Chairman: ["No, no; let us vote on the section."] I was about to move that the committee rise, report progress, and ask leave to sit again. ["No;" "no."]

The CHAIRMAN. Does the gentleman make that motion?

Mr. CUYLER. Yes, sir; I do make the motion.

The motion was not agreed to.

The CHAIRMAN. The question recurs on the section.

The section was rejected.

The CLERK read the next section, as follows.

SECTION 22. At the first general election after this Constitution takes effect, and every three years thereafter, the qualified electors of the Commonwealth shall elect a State officer to be called the Comptroller of Corporations, whose duty it shall be to see that every corporation doing business in Pennsylvania has complied with all the provisions of its charter and the requirements of the law, and hereafter no corporation shall begin to do business until it has obtained from said Comptroller a certificate that it has the capital paid in which may be required by law and has in all respects conformed to all laws relating to the class of corporations to which it belongs. It shall be the duty of said Comptroller to report all delinquencies of corporations to the Attorney General and to the Legislature, with such recommendation as the nature of the case may require.

["Question! Question!"]

Mr. BIGLER. A single word. In the executive department there is a provision for a Secretary of Internal Affairs to perform certain duties, and such others as the Legislature may impose on him. Let us vote this section down.

Mr. WOODWARD. I am sorry that my friend from Carbon county, (Mr. Lilly,) who seems to manage this Convention, is in such a hurry to sacrifice every suggestion of the committee, who have taken some pains to consider this subject. As soon as the gentleman from Philadelphia (Mr. Cuyler) rose to propose a rising of the committee, the stentorian voice of the gentleman from Carbon drowned all thoughts on that subject. Now, Mr. Chairman, I have no doubt this section will be voted down, for everything else that the committee proposed that was good for anything has been voted down, and I hope the gentleman from Carbon will be gratified with killing all the suggestions that anybody makes in this Convention except himself; but before this hurried body, under the lash of this hurried leader, votes down this section, I am going to utter some thoughts in regard to



it and some reasons why the Convention should support it.

Mr. DALLAS. Will the gentleman give way to a motion to rise?

Mr. WOODWARD. I will with great pleasure.

Mr. DALLAS. 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 thirty-nine, noes twenty-five.

The committee accordingly rose, and the President *pro tempore* having resumed

the chair, the Chairman (Mr. Stanton) reported that the committee of the whole had had under consideration the article (No. 21) reported by the Committee on Private Corporations, 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. CORBETT. I move that the Convention adjourn.

The motion was agreed to, and (at two o'clock and fifty-six minutes P. M.) the Convention adjourned.

## ONE HUNDRED AND FOURTH DAY.

WEDNESDAY, May 21, 1873.

The Convention met at half past nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

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

LEAVES OF ABSENCE.

Mr. WRIGHT. I ask leave of absence for Mr. Alricks for a few days.

Leave was granted.

Mr. T. H. B. PATTERSON. I ask leave of absence for Mr. Ewing for a few days from to-day.

Leave was granted.

Mr. MINOR. I ask leave of absence for Mr. Hunsicker, of Montgomery, to-day to attend a funeral.

Leave was granted.

Mr. J. M. BAILEY. I ask leave of absence for Mr. Funck for a few days.

Leave was granted.

Mr. MANN. I ask leave of absence for Mr. Craig for to-day and to-morrow.

Leave was granted.

INDEPENDENCE SQUARE.

Mr. ACHENBACH. I offer the following resolution:

WHEREAS, Joseph Leeds, of Philadelphia, has presented to each member of the Convention his pamphlet containing a design for improving Independence Square and the three main front buildings thereon as a monument of memorial to honor the fathers of our country, and a simple plan for funds to pay for the same and support it forever, both subject to any improvements to render them better; therefore,

*Resolved*, That the same has the approval of the Convention.

On the question of ordering the resolution to a second reading, a division was called for.

Mr. DARLINGTON. I do not know whether we ought to endorse that. How many members of the Convention are there who know anything about it? I move to postpone the further consideration of the resolution for the present.

Mr. LILLY. I rise to a question of order. The question is whether shall we take up

and consider the resolution. That question has not yet been decided, and a motion to postpone is not in order.

The PRESIDENT *pro tem.* The question is on proceeding to the second reading and consideration of the resolution. That is the question before the House.

The question being put, it was decided in the negative.

PRIVATE CORPORATIONS.

Mr. LILLY. I move that we go into committee of the whole on the subject we had under consideration when the Convention adjourned yesterday.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Stanton in the chair.

The CHAIRMAN. When the committee rose yesterday they had under consideration section twenty-two of the article reported by the Committee on Private Corporations. The section will be read.

The CLERK read as follows:

SECTION 22. At the first general election after this Constitution takes effect, and every three years thereafter, the qualified electors of the Commonwealth shall elect a State officer to be called the Comptroller of Corporations, whose duty it shall be to see that every corporation doing business in Pennsylvania has complied with all the provisions of its charter and the requirements of the law, and hereafter no corporation shall begin to do business until it has obtained from said Comptroller a certificate that it has the capital paid in which may be required by law, and has in all respects conformed to all laws relating to the class of corporations to which it belongs. It shall be the duty of said Comptroller to report all delinquencies of corporations to the Attorney General and to the Legislature, with such recommendation as the nature of the case may require.

The section was rejected.

The CHAIRMAN. The article has been gone through with.

The article reported by the Committee on Private Corporations being completed, the committee of the whole rose, and the

President *pro tem.* having resumed the chair, the Chairman (Mr. Stanton) reported that the committee of the whole had had under consideration the article (No. 21) reported by the Committee on Private Corporations, and had directed him to report the same with amendments.

The amendments were read.

The amended article, as reported, is as follows:

ARTICLE —.

CORPORATIONS.

SECTION 1. All existing charters or grants of special or exclusive privileges under which a *bona fide* organization shall not have taken place and business been commenced in good faith at the time of the adoption of this Constitution shall thereafter have no validity.

SECTION 2. The Legislature shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same for the benefit of such corporation, except upon the terms of such corporation thereafter holding such charter, subject to the provisions of this Constitution.

SECTION 3. The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking by the Legislature of the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals. And the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such a manner as to infringe upon the equal right of individuals or the general well-being of the State.

SECTION 4. In all elections for the managing officers of a corporation each member or shareholder shall have as many votes as he has shares, multiplied by the number of officers to be elected, and he may cast the whole number of his votes for one candidate or distribute them upon two or more candidates as he may prefer.

SECTION 5. No foreign corporation shall do any business in any city or county of this State without having a known place of business in such city or county and an authorized agent upon whom process may be served.

SECTION 6. No corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate except what may

be necessary and proper for its legitimate business, and the Legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages, made by viewers or otherwise; the final determination of the amount of such damages shall in all cases of appeal be determined by a jury.

SECTION 7. Any general banking law which shall be passed shall provide for the registry and countersigning by an officer of the State of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the State Treasurer for the redemption of such notes or bills.

SECTION 8. No banking or other corporation shall receive or pay, directly or indirectly, a greater rate of interest than is allowed by law to individuals.

SECTION 9. All insurance companies incorporated by other States and doing business in this State shall be subject to the same rate and measure of taxation as similar companies incorporated by this State.

ORDER OF BUSINESS.

The PRESIDENT *pro tem.* The next business in order is the article on future amendments.

Mr. HARRY WHITE. I move that the Convention resolve itself into committee of the whole on future amendments.

Mr. HEMPHILL. The chairman of that committee is not here to-day, and I trust that article will be passed over.

Mr. HARRY WHITE. I withdraw the motion.

The PRESIDENT *pro tem.* The next business in order is the report of the Committee on Declaration of Rights.

Mr. DODD. I move that the Convention go into committee of the whole on that report.

The motion was agreed to.

DECLARATION OF RIGHTS.

The Convention accordingly resolved itself into committee of the whole, Mr. Bigler in the chair.

The CHAIRMAN. The committee of the whole have had referred to them article (No. 18) reported from the Committee on Declaration of Rights, which will be read.

The CLERK read the preamble as follows:

"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."

Mr. MACCONNELL. Mr. Chairman: Col. Hopkins, deceased, was the chairman of the Committee on the Declaration of Rights. The report of the committee as it is presented was agreed upon during the life time of Mr. Hopkins, and whilst he presided over the committee. On the same evening that he started to go home and was taken sick on the way, the committee finished its work and authorized Mr. Hopkins on his return to make the report. On his death, I being the second person named on the committee, the chairmanship of the committee devolved on me, and as the chairman *pro tem*. I made the report.

I may say, Mr. Chairman, when the committee first met a difficulty presented itself to their minds which arose out of the clause in the act of Assembly under which this Convention is holding its session, which provides:

"And provided further, That nothing herein contained shall authorize said Convention to change the language or to alter in any manner the several provisions of the ninth article of the present Constitution, commonly known as the Declaration of Rights, but the same shall be excepted from the powers given to said Convention, and shall be and remain inviolate forever."

It was manifest to the committee that if that provision was binding upon the Convention, that subject was reserved from the powers of the Convention, and as the Convention could take no jurisdiction over it, it could authorize none of its committees to take jurisdiction over it.

The difficulty then which we had to encounter was whether we would consider that provision as binding, and if so report that fact to the Convention. I believe a majority of the committee considered that the provision was not binding. The Legislature originally provided for a vote of the citizens as to whether a Convention should be held, and that vote was an unconditional one. The question submitted to the people was, not whether a Convention should be held to amend the Constitution in some particular clauses merely, but unconditionally, and simply whether a Convention to amend the Constitution should be called; and the people voted on that in that unconditional way. When, however, the next Legislature came to make provision for carrying out the vote of the people, they saw proper to

limit the powers of the Convention by the provision which I have read, and by another provision in relation to courts of chancery.

I believe that a majority of the committee thought that the Legislature had no such power. Besides, a vote was taken by the Convention, at Harrisburg, which indicated that a very large majority of the Convention were of that opinion; and it was in pursuance of that vote, as we understand it, that our committee was raised. And, moreover, there were a large number of propositions submitted to the committee which involved changes in the Bill of Rights. Those propositions were specifically submitted to us; and a majority of the committee were bound to take them into consideration and report upon them. A majority of the committee therefore thought that we had a right to act upon the matter. We were, however, very conservative; we have made but very few changes, and those of rather an unimportant character. If the committee of the whole will indulge me, I will refer to them now, as it will take but a few moments to do so. The first, second and third sections we report without change. In the fourth section we strike out the word "a" before God, in the first line. The old section read, "that no person who acknowledges the being of a God," &c., "shall be disqualified," &c.; we struck out the letter "a" before "God."

In the section referring to elections we added to the old section, "and no power, civil or military, shall at any time interfere with the free exercise of the right of suffrage."

The next change that we made was in the eighth section, adding to it the words, "subscribed to by the affiant." That was done in consequence of information we had that it was a practice in Philadelphia amongst aldermen and committing magistrates to receive verbal informations against persons accused of crime and make no record of them, and therefore we require warrants to be supported by oath or affirmation subscribed to by the affiant, to put a stop to that practice.

There is in the second line of the printed article as it is upon the desks of the members a misprint. The word "professions," in the eighth section, ought to be "possession."

The next change that we made was in the tenth section. It is in the provision in regard to taking private property for

public use. We added: "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."

In the eleventh section we added: "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."

That, I may remark, has been amply provided for in the twenty-third section of the report of the Committee on Legislation, which section was adopted by the committee of the whole.

The seventeenth section, which originally read "no *ex post facto* law, nor any law impairing contracts shall be passed," we changed so that it now reads as reported:

"That no *ex post facto* law, nor any grant impairing contracts or making irrevocable any grant or special privileges or immunities, shall be passed."

These are all the changes that were made by the Committee on the Declaration of Rights. The committee of the whole will see that they are few and comparatively unimportant. After the Committee on the Declaration of Rights had commenced to perform its duties in regard to the Bill of Rights, the Convention saw proper to impose upon it the duty of framing a preamble to the Constitution. The committee of course assumed the performance of that duty. The final action of the committee in that particular case took place on the same evening that Mr. Hopkins started for his home, before his death. We took the old preamble and adopted it, but we interpolated the following provision after the word "Pennsylvania:" "Recognizing the sovereignty of God and humbly invoking His guidance in our future destiny."

That was put in on the recommendation, the particular recommendation, the earnest recommendation, of Mr. Hopkins. He submitted it to the Committee on the Declaration of Rights, and with a single verbal change, which was entirely unimportant, it was adopted by that committee. It may be said that this was Mr. Hopkins' last public act. I suppose I would not be extravagant if I were to say that it was his legacy to his native State. He was very earnest about it, and the Committee on the Declaration of Rights thought that it was proper to put it in, and I hope it

will be adopted without modification by this committee of the whole.

I might say further that it will be noticed in numbering this article we made it the first article of the Constitution. Looking over the Constitutions of the States we found, if my recollection is not at fault, that the article on the Declaration of Rights occupied that position in thirty-two State Constitutions. It seemed to us that that was the proper place for it, and we so reported it. That will be before the committee of the whole or before the Convention as the case may be, and of course they will act as they may think best.

This, I think, Mr. Chairman, is about all that is necessary for me to say on the subject at the present time.

I would say further that the preamble is really no part of the article. As it is a separate thing from the article, it might be a question whether the committee would not take up the article and dispose of it and afterwards dispose of the preamble. That is, however, merely a question of when the committee will act upon it, and is of no very great importance.

Mr. CLARK. When this Convention assembled at Harrisburg last fall, it seemed apparent to me, at least, that there was no great desire among the members of the Convention to make any change whatever in the ninth article of the Constitution. The committee was appointed, as I understood at that time, and I think the Journal will show, more as a declaration upon the part of the Convention that the Convention could not be limited by the action of the Legislature, whilst very many of the delegates present asserted that they desired no change. I believe that the changes which are made by this report are immaterial in their character and might very well be dispensed with; and I therefore move to strike out the report of the committee and insert in lieu thereof the ninth article of the Constitution as it has heretofore and now exists.

The CHAIRMAN. That question is before the committee.

Mr. CLARK. And upon that motion I have a word or two to say.

The CHAIRMAN. Does the gentleman desire the article to be read?

Mr. CLARK. No. I presume that it is familiar to the Convention.

The CHAIRMAN. The reading of the article proposed to be inserted will be dis-

pensed with if no one desires to have it read.

Mr. CLARK. Mr. Chairman: When this Convention assembled in Harrisburg last November, I was favored with an appointment on the committee of fifteen, whose duty it was to report to the Convention the rules which should control its subsequent deliberations.

When that committee reported, a minority dissented from the action of the majority, in so far as the report provided for the appointment of a Committee on the Declaration of Rights. The report of the majority of the committee was, however, adopted, and I was again favored with an appointment on the committee chosen to report amendments to this, the ninth article.

In pursuance of that appointment, and in deference to the superior wisdom of the Convention, I have acted with the committee in proposing and suggesting such changes in the Declaration of Rights as the exigencies of the times seemed to demand, relinquishing for the time my well-considered convictions against the propriety or legality of making any such changes. When, however, this report comes now to be considered by the Convention in committee of the whole, it is due to myself, perhaps, to state the grounds of my opposition to effecting any change in this article.

In reference to the nature, powers and limitations of a Constitutional Convention there seems to be in the minds of this Convention two widely divergent and conflicting opinions.

1. There are those who seem to believe and do maintain before this body that as a Constitutional Convention, we are equivalent to a virtual assemblage of the people themselves in their primary and sovereign capacity, and are possessed by actual transfer of all the powers inherent in that sovereign, that we spring from the people directly, and as a constitutional assemblage exist independently of any branch of the government; and that therefore we are absolutely unlimited in our powers.

Indeed it is gravely asserted that we are in a condition of peaceful revolution against the government of the State; and that therefore we are acting independently of all government; that we are *dehors* the law, and acting in a sort of permissive defiance of it.

2. There are others, and I am one of these, who maintain that a Constitutional Convention is very limited in its powers;

that its work is rather of the nature of committee work; that it is the proper duty of this body to devise, suggest and report upon such matters as have been legally committed to us; and that we have none of the attributes of sovereignty whatever; that instead of being in a state of revolution, peaceful or otherwise, we are in constant and willing submission to the law and Constitution of the State, acting in obedience to the law instead of revolting against it.

I maintain, sir, that this is not a revolutionary Convention, but that it is a Constitutional Convention. A Constitutional Convention not merely because called together to reform the Constitution, but because called together under constitutional authority, to amend and change the Constitution in a constitutional way.

Hence the obvious distinction between this movement and a revolutionary movement. A revolution, whether peaceful or not, exists in violation of and in defiance of the law which it wishes to subvert; it rests upon usurpation, and those engaged are not by any forms of existing law authorized to act whilst success only is the test of the justness of the movement.

This Convention is a movement made in accordance with the presently existing organization of the government. The government of the State consists of the electoral, legislative, executive and judicial departments. We were chosen and elected by the first—under the authority of the second; our election was proclaimed by the third, and our existence and powers are recognised by the fourth. Thus we see that the people, not in any revolutionary manner or spirit, but in their sovereign capacity as a corporate unit, have appointed this Convention. Indeed the people of this Commonwealth are only sovereign in their organic unity. The people either as individuals or as an aggregated whole can neither make the laws, construe them, nor execute them, nor can they choose those who may do it. They perform all these functions by representation. If the people, that is the masses of the people, of their own volition, and outside of their governmental machinery, were to undertake the performance of any of these functions then we would indeed be in the midst of a revolution.

What is done, therefore, by the several departments of the State or either of the them, to change its form of government, consistently with and in obedience to the

Constitution and the laws is constitutional and therefore not revolutionary.

What is done, however, by any of these agencies or by the people themselves to the same end inconsistent with and in violation of the Constitution and the laws, is revolutionary because not constitutionally done.

With these distinctions in view we may readily discover the legitimate character of this body, and now let us examine its powers.

The act of Assembly of 1873, entitled "An act to provide for calling a Convention to amend the Constitution," so far as it relates to the powers of this Convention, provides as follows:

SECTION 4. Said Convention, so elected, assembled and organized, shall have power to propose to the citizens of this Commonwealth, for their approval or rejection, a new Constitution or amendments to the present one, or specific amendments to be voted for separately, which shall be engrossed and signed by the president and chief clerk, and delivered to the secretary of the Commonwealth, by whom and under whose direction, it or they shall be entered on record in his office, and published once a week in at least two newspapers in each county, where two papers are published, for four weeks next preceeding the day of election that shall be held for the adoption or rejection of the Constitution or amendments so submitted: *Provided*, That one-third of all the members of the Convention shall have the right to require the separate and distinct submission, to a popular vote, of any change and amendment proposed by the convention: *And provided further*, That nothing herein contained shall authorize the said Convention to change the language, or to alter in any manner the several provisions of the ninth article of the present Constitution, commonly known as the Declaration of Rights, but the same shall be excepted from the powers given to said Convention, and shall be and remain inviolate forever: *And provided further*, That the said Convention shall not create, establish or submit any proposition for the establishment of a court or courts with exclusive equity jurisdiction.

SECTION 5. The Convention shall submit the amendments agreed to by it to the qualified voters of the State for their adoption or rejection, at such time or times, and in such manner as the Convention shall prescribe, subject, however,

to the limitation as to the separate submission of amendments contained in this act; and all amendments accepted by a majority vote of the electors voting thereon, shall become a part of the Constitution.

If then the Legislature had the legal authority to impose the limitations and restrictions contained in these sections of this act, we have not the power or authority with impunity to violate its provisions.

Inasmuch, therefore, as the question raised directly involves a consideration of the powers of one of the departments of the government, a discussion of it necessarily demands a reference to the principles upon which the government of the State is founded. I hope therefore what may be said in this connection will not be regarded, as far as I am concerned, as pretentious or assuming.

The Legislature, under the present Constitution, is possessed with very extensive powers. The limitations of its powers are all expressed in the letter of the Constitution. In this respect we may observe the striking contrast between the powers of the national Congress and the powers of the State Legislature. The Constitution of the United States is the charter which vests legislative power in Congress and the extent of the grant fixes the limit of its powers. Congress can exercise no power not thus specifically conferred.

The Constitution of the State, however, vests all the legislative power of the people, not of a fundamental character or in conflict with the Constitution of the United States, in the Senate and House of Representatives, with certain specific limitations.

In short, the Constitution of the United States contains a specific grant of power to Congress, with general limitations, whilst the Constitution of the State contains a general grant with specific limitations. I maintain, therefore, that an act of the Legislature calling a Constitutional Convention is such an act as it was authorized to pass, being within the terms of the grant.

The right of the Legislature to call a Convention, after a submission to the people, will, of course, not be called in question, and, I think, upon precedent and authority, as well as principle, there can be no doubt of its authority to convene such a Convention without submission. We have had within the limits of the United States, it is said, before and

since the revolutionary war, in excess of one hundred and fifty constitutional conventions, and whilst most of these were called by legislative action, not one-fourth of them were authorized by previous submission and vote of the people.

Mr. John Alexander Jamison, in his learned treatise entitled "The Constitutional Convention," section one hundred and twenty-three, says: "There may then be two cases; first, when the Legislature itself passes upon the question of calling a Convention without the intervention of the electoral body; and secondly, where the Legislature first recommends a call, then refers the question to a vote of the electors, and finally on an affirmative vote by the latter issues the call. In the first case the act of the Legislature calling the Convention is an act of legislation, strictly so called." And again, in section three hundred and seventy-five, the same writer says: "Finally, in any crisis calling for legal authority to act, and where no constitutional provision, either permissive or restrictive, exists, if the Legislature take upon itself, within the limits of a wise expediency, the power to act to give the requisite authority and direction, there is no department of the government that can question its right to do so, and not only that, but a failure to act would stamp it as false to its duty. Having all legislative power within the limits indicated, the making of such provisions of law as are needed to save the State from inconvenience, loss or danger, defines precisely the legitimate exercise of that power; to do it is its imperative duty. For that it is constitutionally competent, and all departments of the government, all agents and representatives of the sovereign charged with collateral functions are bound within the scope of that power to obey its behests, as the authentic expression of the will of that sovereign."

Mr. Whipple, in his argument upon the famous case of *Luther vs. Borden*, in the Supreme Court of the United States, 7 Howard, 29, says: "But it is urged by the opposite counsel that the great doctrine of the sovereignty of the people and their consequent power to alter the Constitution whenever they choose, is the American doctrine, in opposition to that of the Holy Alliance of Europe, which proclaims that all reforms must emanate from the throne. Let us examine this so-called American doctrine. I say that a proposition to amend always comes from the legislative body," &c., &c.

Whilst, therefore, a Constitutional Convention may, under the well-established precedents of the last century, be legally called by the Legislature, such a Convention should not be called except when demanded by great public necessity, and it is proper, therefore, that the voice of the people be taken, formally or informally, as to the existence of such public necessity. In the year 1820 the council of revision of the State of New York vetoed an act of the Legislature of that State calling a convention, upon the ground that the council thought "it the most wise and safe course, and most accordant with the great trust committed to the representative powers, under the Constitution, that the question of a general revision of it should be submitted to the people in the first instance, to determine whether a convention ought to be convened." It was not pretended that such an act, had it received the approval of the council, would have been outside the power of the Legislature.

From this I infer that a submission to the people of the propriety of calling a Convention, is a wise and safe course, but is not essential, and that such submission, if made, is simply consultatory and advisory; it affords the best means of ascertaining the great public necessity for such a call. Indeed, the submission is never made directly to the people; it is made to the electors, who are only part of the people, but are sometimes called the people; the submission is really and in fact made to that one of the co-ordinate departments of the government, under the Constitution, which is nearest the people. The Legislature—one of the departments of the government—having full power in the premises, for prudential considerations consults with and takes the sense of the electoral department, which has no power whatever in the premises, but which is in closest intimacy with the people and knows their wishes and their wants. Pursuing this wise and safe course, the Legislature passed the act of second June, 1871, authorizing a popular vote, &c. The election held pursuant to this act showed a strong sentiment in favor of a Convention throughout the State. The ascertainment of this fact being the purpose of the enactment, when it was ascertained the functions of the act were discharged.

It is argued, however, that this submission to the people, and the vote thereon, was substantially a call by the people, and the Convention is not therefore the creature of the subsequent legislative en-



actment, but of the previous popular vote. In reply to this, let us suppose that the subsequent enactment had never been passed by the Legislature, then the Convention had certainly not been called. This, too, is a supposable case, as the sudden intervention of some great emergency or revulsion of public sentiment might have rendered the passage of such an act highly inexpedient. The legislators are, or ought to be, controlled in all official duties by their oath, and are therefore bound to act as their judgment and discretion may direct. If, in their wisdom then, they had assumed to differ with the people, and had refused to pass the act of 1872, who can gainsay their power to refuse? Suppose, too, that the representatives from districts voting against a Convention had been in the ascendancy and that they, sustaining the wishes of their constituents, had defeated the passage of any such law, notwithstanding the aggregate majority in the State, or, if you please, suppose that the Legislature, without any reason whatever, had not passed an act calling a Convention, what, in either event, would have been the result? Why, clearly, we would have had no Convention. The call then had its efficacy in the action of the Legislature. If then the Legislature had the power to defeat the whole project of a Convention it had the right to defeat a part; the whole is greater than any of its parts, and jurisdiction over the whole question necessarily therefore implies jurisdiction over any part of it.

The fallacy of the argument becomes more apparent when we recur to the fact that the submission was not to the people as such, but only to that portion of the people who compose a single department, the electoral department. The powers and duties of that department are not general and comprehensive as the powers of the Legislature are; they are very limited, indeed. The office of an elector is simply to vote at elections; this covers the whole scope of his authority, and yet he is an officer of the people, and a representative of the people to serve them in this capacity.

Jamison, in his treatise, heretofore referred to, says of this office:

"In most modern governments, including our own, there are four distinct branches or departments, to which are confided the powers delegated by the sovereign. Of these the first is the *electors*, whose function is that of choosing

out of their own number the functionaries employed in the other departments, to which in the United States is added that of enacting the fundamental laws. The electoral body is the most numerous in the State charged with an official function. It comprises the suffrage-holders or voters, or, in a qualified sense, the people, and differs from the other three departments in that it constitutes a body which never assembles, but acts in segments of such convenient size as not to render conference and co-operation impracticable."

The Constitution of Pennsylvania, referring to election of the Governor, Senators and Representatives, &c., provides that these officers shall be chosen by the *citizens* of the Commonwealth. In section one of article three it is further provided, on the same subject, in words and form following:

"In elections by the *citizens* every white freemen of the age of twenty-one years, having resided in this State one year, &c., &c., shall enjoy the rights of an elector."

Thus it is clear: *First*, That all elections are to be by the *citizens* of Commonwealth; the term "*citizens*," not only since but after the passage of the Fourteenth Amendment to the Constitution of the United States, embracing all persons born or naturalized in the United States and residing within the Commonwealth, male or female, adults or minors, sane or insane; and *Second*, That the right of an elector is only to be exercised by a certain specified class of these citizens.

Whilst these conclusions seem to be at variance and inconsistent, each with the other, they are reconciled by the principle of representation upon which a government is founded. The elector is a representative power under the Constitution, and exercises his office under its authority for and representing the main body of the citizens. An elector, therefore, votes, not for himself alone, but representing those about him, identified with him in interest or associated with him in life.

The power of an elector, therefore, being a power derived under the Constitution, is as specific and limited as the terms of the grant. He is authorized to vote at elections, and to vote is his only power. Whilst, therefore, he may be and is competent by his vote to express his own wish and, perhaps, the sense of his constituency upon any proper subject, he would not, either independently or

through the agency of any department of the government, be competent to call a Constitutional Convention, prescribe the rules of its government or define the limitations of its power. These are legislative powers and can only be performed by the Legislature.

The inquiry may be made here, if the Legislature should fail or refuse to call a Convention when the people demanded such a call, how could the people compel a compliance with their wishes, and succeed in having a Convention called?

In reply to this we answer: The Legislature is chosen from the people, by the people, and will ordinarily represent the wishes of the people. When the Legislature perseveringly refuses to be the exponent of the popular will then we may pronounce our system a failure, and a revolutionary, not a constitutional, movement may re-model and reform the plan of its organism and give us a better.

In reference to the power of the Legislature to bind a Convention, I may be pardoned for again referring to the work already referred to, as it exhibits on the part of the author great research and learning. Jamison on this subject uses the following language:

"The question now arises, suppose the Legislature should assume to dictate to the Convention what it should or what it should not recommend, would the latter be bound to obey? To the first branch of the question, if by it be implied the dictation of specific measures and not that of the general subjects for its consideration, the answer must be in the negative. A Legislature is not constitutionally competent to do an absurd act; and it would be guilty of rank absurdity if it were to prescribe to a deliberative body what the results of its deliberations should be.

"But on the other hand, suppose the question to mean whether, if the Legislature should issue instructions in regard to the subjects to which the Convention should direct its inquiries, the latter would be bound to obey? The answer must be that it would; for that would be emphatically a question of expediency, to determine which is more appropriately within the province of a Legislature. Although the Convention might dissent from its conclusion, and in fact represent the wiser opinion, still it could show no warrant for asserting its opinion in opposition to that of the Legislature. It could show no warrant even for assem-

bling except the act of the latter, which upon its face would direct the exercise of its delegated powers within certain prescribed limits. It clearly could not rightfully separate the mandate of the sovereign into two parts, one for obedience and the other for disobedience, unless obedience to both were incompatible with the exercise of its functions as a Convention at all."

Similar considerations will enable us to answer the other branch of the question, namely: Whether the Convention ought to obey, should the Legislature prescribe to it what it should not enact or recommend? It is believed that a prohibition of this character would be imposed only when the conviction should be very strong and general that the subjects embraced within it ought not, on grounds of policy or of principle, to be brought into discussion at all. When that should be the case, who would say that obedience ought not to be accorded to the act imposing the restriction? If it were believed that narrow or partisan views lay at the bottom of the inhibition, that would furnish a reason for appealing to the people to cause themselves to be better represented, or to reconsider their opinions, but not for disobedience to laws constitutionally passed. The case, indeed, for the Legislature would, at the worst, stand thus: "A body, consisting of two chambers, and, therefore, probably better representing the diverse interests of the State, differs in its views of the expediency of particular constitutional changes, from another body, chosen, it is true, at a later day, but comprised in a single chamber, in which important interests might be smothered by a majority; the question now being, whose views are to prevail? The consideration that fundamental laws ought to embody only such measures as have ceased to be experimental, as express fixed and settled policy—a condition that could not be fulfilled so long as the measures proposed should be subjects of party conflict—must be regarded as deciding it in favor of the Legislature; for the fact that such a body failed to approve of a measure would indicate that it is not yet ripe for harvest as a fundamental law; while the fact that a single chamber expressly approved it, would not necessarily indicate the contrary. Neither in the electoral college nor in a Convention is there any device by which a minority, however large, can cause its views to prevail, or prevent those of the majority

from prevailing. In Legislatures, the division into two chambers often operates to produce such an effect; measures which a majority of all the representatives, balloting together, would promptly pass, being defeated when there is required to pass them a majority in two houses. More emphatically, then, the fact that proposed constitutional changes are so little desired that they not only fail to receive the sanction, but receive the express reprobation of a Legislature of two houses, is, in my view, conclusive evidence that they are as yet unripe for adoption as parts of the fundamental code."

There is, however, another point of view from which this question may be considered, as affecting our duty as delegates of the people. In the same act in which these limitations of power were imposed, the Legislature fixed definitely the number of delegates of which this Convention should consist; prescribed their qualifications; designated the day upon which and the districts in which they should be chosen; adopted and prescribed a new and altogether unusual method of election, a method heretofore unknown to the law or precedent of the times. At the date of the vote on the submission the people had a right to suppose that the delegates would be chosen according to the ordinary and usual method of election, and that a majority rule would govern their choice and not a minority. Yet the people accepted the provisions of this act of Assembly throughout, and carried them out to the letter. Is it not fair, therefore, in view of their acceptance of the remaining provisions of this act, to assume that we were chosen by the people with a view to the performance of the powers conferred by the act, and subject to the limitations imposed? Would we not act in bad faith to the people who sent us here, were we to consider questions which they regarded as withdrawn from us? If the project of a separate court of chancery was to be a subject of consideration, it is fair to assume that the friends of such a measure would have put champions upon this floor. If the Declaration of Rights had been known to form one of the subjects of revision, some of us might not have been here; other persons, holding distinctive and peculiar views and opinions touching that article might, and probably would, have been sent here to enforce the same upon this Convention.

We too, as delegates or members of this Convention, whilst we theoretically sustain the idea of the sovereign character of our powers, have practically repudiated the doctrine. We have adopted as matter of course the most anomalous and extraordinary method of filling vacancies required by the act, simply because this method was so prescribed; and, indeed, we have scrupulously adhered to the letter of the entire act excepting in the single particular of appointing this committee. We have by the solemn resolution of this Convention recognized the right of the Legislature to deprive us of the power we had already actually possessed and assumed for settlement of our accounts. We have deferred and admitted the superior power of the Legislature in this particular, and now instead of drawing our warrants upon the State Treasurer as heretofore we submit our accounts to the inspection and judgment of the Auditor General. The gentleman from Delaware, (Mr. Broomall,) I understood to say upon this floor the other day, that we were omnipotent, except as restrained by the Constitution of the United States. Omnipotent as we suppose ourselves to be, we find a power in the State to which we must and do bow in submission. The Legislature have indeed repealed the small modicum of salary they had allowed us under the act, and we have by preamble and resolution acknowledged their power so to do. If the Legislature could repeal that portion of the act allowing us compensation, could they not repeal any portion of the act relating to the payment of the expenses of the Convention? If they can, then they might thus practically defeat the whole movement, and cause an adjournment of the Convention.

It is said, however, that the Constitution of 1790 was not formally submitted to the people for ratification or approval; and yet it was received and recognized as a legitimate and legally authenticated instrument notwithstanding.

In reply to this, I may say that the resolution or act of Assembly calling this Convention did not require any submission to the people; indeed not only was the Constitution not submitted to a vote of the people—nor was there any requirement in the resolution of the Assembly that it should be—but the movement was inaugurated in the outset by the Legislature, without consulting the people. The Convention was called by legislative au-

thority alone, without any previous vote of the electoral department, and the Constitution was put into force by the Convention, under the authority and in the manner prescribed in the act, without submitting it to the people. With the leave of the committee I will refer to the act of Assembly authorizing that Convention, and call attention to the strict compliance, on the part of the Convention, with its requirements.

I have here the proceedings of the Convention of 1790 and the resolution upon which that Convention was called. It reads thus:

*"Resolved, That in the opinion of this House it is expedient and proper for the good people of this Commonwealth to choose a Convention for the purpose of reviewing and, if they see occasion, altering and amending the Constitution of this State; that in the opinion of this Assembly the said Convention should consist of the like number of members from the city of Philadelphia and the several counties in this Commonwealth as compose this House, and be chosen on the same day, in the same manner, by the same persons, at the same places, and under the same regulations, as are directed and appointed by the election laws of this State, save that the returns should be made to the Convention so chosen; and that the said Convention should meet at Philadelphia on the fourth Tuesday in November next.*

*"Resolved, That, in the opinion of this House, a Convention being chosen and met, it would be expedient, just and reasonable that the Convention should publish their amendments and alterations for the consideration of the people, and adjourn at least four months previous to confirmation."*

That Convention met in the month of November, 1789, and adjourned on the 26th of February, 1790, and met again on the 9th day of August, 1790, thus permitting the four months to elapse, as the Legislature had required, and resumed their sessions and closed.

MR. DE FRANCE. I would like to ask the gentleman a question. Was the calling of that Convention, in your opinion, done constitutionally?

MR. CLARK. It will be observed that the Constitution of the State makes no provision for this. It is an exercise of legislative authority.

MR. DE FRANCE. The gentleman does not understand me. Was the calling of

the Convention of 1789 done constitutionally?

MR. CLARK. The Constitution of 1776 made no provision for the calling of a Constitutional Convention. It provided for a council of censors, whose duty it should be to sit, and they abandoned their sittings, and the Legislature passed this resolution calling a Constitutional Convention to meet in the month of November, 1789, under the provision which I have just read.

The second day of September, 1793, they concluded their session, having given the requisite notice to the people prescribed by the act of Assembly, and on that same day they closed their labor.

"The Convention then, agreeably to the order of procession, proceeded to the court house on Market street, to make proclamation of the Constitution, and having returned to their chamber, it was on motion ordered that the secretary be directed to deliver the engrossed copy of the Constitution of the Commonwealth of Pennsylvania to the master of the rolls, in order that the same may be recorded."

This action of the Convention was in strict accordance with the authority conferred upon it by the Legislature. Whether the Legislature exceeded its power in thus granting these extraordinary powers is a question which has passed *sub silentio*. I fail to find, after a very careful examination, any such adjudication as was referred to by the learned gentleman from Lycoming, in his address on this question at Harrisburg. I think under the law as it has uniformly been held in the past, it is absolutely impossible that such an adjudication could have been made at all. As the principle of law is well settled, at least since the famous case of *Luther vs. Borden*, 7 Howard's Reports, p. 29, that this is not a question for judicial action at all, and with leave of the Convention I will refer to that case. The court say:

"Certainly, the question which the plaintiff proposed to raise by the testimony he offered has not heretofore been recognized as a judicial one in any of the State courts. In forming the Constitutions of the different States, after the Declaration of Independence, and in the various changes and alterations which have been made since, the political departments"—

Not the judicial, but the political—  
—"have always determined whether the proposed Constitution or amendment was

ratified or not by the people of the State, and the judicial power has followed its decision. In Rhode Island the question has been directly decided. Prosecutions were there instituted against some of the persons who had been active in the forcible opposition to the old government. And in more than one of the cases evidence was offered on the part of the defence similar to the testimony offered in the circuit court, and for the same purpose; that is, for the purpose of showing that the proposed Constitution had been adopted by the people of Rhode Island, and had, therefore, become the established government, and consequently that the parties accused were doing nothing more than their duty in endeavoring to support it.

"The courts uniformly held that inquiry proposed to be made belonged to the political power and not to the judicial; that it rested with the political power to decide whether the charter government had been displaced or not, and when that decision was made, the judicial department would be bound to take notice of it as the paramount law of the State, without the aid of oral evidence or the examination of witnesses."

Thus it will be seen that the question of fact as to the assent of the people to the Constitution of 1790 was appropriately for the Legislature, which is the political department of the State, and the action of the Legislature is conclusive upon the judiciary. In accordance with this view, we find the Legislature following up the enactment of the Constitution of 1790 with provisions for its enforcement; his recognition of the popular assent was binding upon the Supreme Court. In the case of almost all Constitutional Conventions, including the present one, the popular vote is made returnable to the General Assembly of the State, and that body calculates, authenticates and announces the result.

The question whether a Legislature can bind a Convention has repeatedly been the subject of discussion in the various Constitutional Conventions which have been held in various parts of the Union, but my time will not permit a reference to the results of these various discussions.

Believing, therefore, that the people are not demanding any change in this article, and that we have no power to interfere with its provision, I hope this motion may be sustained.

Mr. D. W. PATTERSON. I should like to ask the gentleman one question. I ask if he holds that the Legislature have the supreme power so as to prevent the people from at any time changing or amending the Constitution. In other words, have not the people, in their primary capacity, independent of any enabling act of the Legislature, the right to meet and alter and change their Constitution?

Mr. CLARK. Mr. Chairman: A proper question deserves a proper answer. I have endeavored in the argument which I have presented to draw the obvious and plain distinction between a Constitutional Convention and a revolutionary convention. I admit the right of revolution; this is not a revolutionary body. This is a Constitutional Convention organized by the government under its present organism: we are chosen by the people in their organic unity, chosen by the electors under authority of the Legislature, our election proclaimed by the Governor and our existence and our power recognized by the courts. This is a Constitutional Convention. When you do what the gentleman from Lancaster suggests then you inaugurate a different movement altogether, a movement revolutionary in its character and not constitutional at all.

Mr. DE FRANCE. Before the gentleman sits down I should like to interrogate him a little. As I understand it, the Constitution of 1776 provided that the mode of calling a Constitutional Convention should be by the censors elected by the people in the different counties. Now, my question is this: Was the Constitutional Convention of 1790 a revolutionary body or was it a constitutional, legal body?

Mr. CLARK. I say it was a Constitutional Convention called by the legitimate power of the State, the Legislature, who had all the people's powers of legislation.

Mr. DE FRANCE. But the Constitution of 1776 provided that two-thirds of the censors elected in the different counties might call a convention. If the clerk will read the last section, section forty-seven, it will explain what I mean.

Mr. CLARK. I know what the gentleman refers to. It is altogether immaterial in this discussion, because we are not now discussing the legality of the Convention of 1776. I have shown that the Legislature, the political power of the State, recognized that as the Constitution of the Commonwealth, and the

courts were bound by it. If it was revolutionary, then it is not a precedent for us now; if it was constitutional, then it is; that is all.

Mr. DE FRANCE. I understood you to say that there had never been anything but a legal body called to change the Constitution of the State of Pennsylvania. If your theory was correct, the Convention of 1789 was a revolutionary body.

Mr. CLARK. I apprehend not. It was called by the Legislature, called by the body representing the people, having a transfer of all the legislative powers of the people. I apprehend it was no such body.

Mr. W. H. SMITH. Mr. Chairman: I understand that the gentleman from Indiana has moved as an amendment the entire ninth article of the present Constitution on the Bill of Rights. Is that the case?

The CHAIRMAN. That is the case.

Mr. W. H. SMITH. I move then to amend by substituting for the seventh section of the ninth article as he presents it, the following:

"In all prosecutions for libel, the truth may be given in evidence as well as the sources of information on which the alleged libel may have been based, and if it shall appear to the jury that the matter charged as libellous is true or that it was based on reliable information and was not a malicious invention, but was published for good motives and justifiable ends, the accused shall be acquitted."

Mr. J. W. F. WHITE. I rise for information or on a question of order. I understand the gentleman from Indiana to move to substitute the ninth article of the present Constitution for the report of the committee. Now is it in order to move an amendment to that? If that motion should prevail, does not the ninth article of the present Constitution take the place of the report of the committee and then come up for hearing in regular order?

The CHAIRMAN. No, sir. The member from Indiana moved to strike out the report of the committee and insert the Bill of Rights as it stands in the old Constitution. The gentleman from Allegheny moves to amend the amendment by striking out the seventh section from the Bill of Rights and inserting the paragraph which has been read. That is before the committee as an amendment to the amendment. If the amendment supercedes the report, then that cannot

be amended except by addition, because it has been adopted by the body.

Mr. J. W. F. WHITE. The point I wished to raise was this: When this Convention had before it simply the preamble reported by the committee, is it competent for the delegate from Indiana to move as an amendment to that preamble an entire article of the Constitution?

The CHAIRMAN. The report of the committee was referred to the committee of the whole. The Chair so announced. It is true that only the preamble was read, but in the understanding of the Chairman of the committee of the whole, the whole report is before the committee. The Chair will remark in this connection, that it is perfectly competent now to amend the matter proposed to be stricken out if the delegate desires to accomplish anything in that way.

Mr. BUCKALEW. I hope the gentleman from Allegheny (Mr. W. H. Smith) will withdraw the amendment to the amendment for the present.

Mr. W. H. SMITH. No, I would rather not.

The CHAIRMAN. The gentleman from Allegheny has the floor.

Mr. H. W. SMITH. I desire to have this question brought distinctly before this Convention. It is a very important one. There is a great deal of feeling about it in the State. I do not know any better way to bring it before the Convention than just in this shape.

I will state that the law of libel under the seventh section of the present Bill of Rights is differently interpreted throughout the State. Here in Philadelphia a directly opposite decision was given in the same court. The truth was given in evidence, and the truth was not doubted; but precisely opposite decisions were given. In one case the defendant was acquitted, and in the other he was convicted. But generally, the decision on the same facts would be wholly antagonistic, as between the courts of Philadelphia and those in the western part of the State.

The daily papers have to depend for their sustenance upon information gathered and printed in their local columns. They have to depend, of course, a great deal upon the character of those who make the reports to them for the information they receive. They cannot withhold it to verify it; it cannot be held over for twenty-four hours. If they did, some other paper would get it, or it would spoil, and their profit would be gone on that

transaction. They must therefore print what they can get. If they seek information at reliable places and from reliable sources I think they should be excused from being compelled to prove the truth when they furnish evidence that the information they got was obtained from creditable sources and was not a malicious invention of their own. Therefore, I have offered this amendment.

As the law exists at present the newspapers are utterly powerless to expose any official corruption anywhere in the State of Pennsylvania. The parties engaged in that corruption cover up their tracks so well that it is almost impossible for the newspapers to detect them. They can only guess and infer, and generally impute, and then if they go too far, the law comes down upon them as it is interpreted in our end of the State.

The great fraud that was developed in New York never would have been brought to light if it had not been for the fact that the libel law as it exists in the State of New York is just about what this section proposes. The press were allowed to ferret out and denounce men by name, to give facts and publish them, and print them, whereby those great frauds were discovered; and until in Pennsylvania the press shall have the same privilege, the corrupt men and the thieves that are robbing the State will have free play for their glaring misdemeanors.

I alluded before, sir, to the variable interpretation of the present law. Now I am led to believe from conversation with gentlemen in this city that there is a very much more liberal interpretation given here in Philadelphia than is given in the western part of the State. I have known several cases there in which there was a conviction for libel notwithstanding the provisions of the present seventh section allowing the truth to be given. There was a case wherein a man was brought before the court to give an account of the guardianship of children he had in charge, —and his defalcation and violation of his trust was so palpable that the judge reprimanded him in the severest terms and an order was granted to compel him to make restitution. What the judge said on that occasion was reported in the newspapers. The truth was not only not denied, but was established by the decree of the court. That culprit, who had so betrayed his trust, sued the newspaper publisher for printing the report of the charge of the judge and recovered a considerable fine

and very heavy costs against the editor. The judge who delivered the charge testified that the report of what he said was milder than he spoke it. I do believe that that is only one of many cases that have occurred proving the uncertainty of the character of the present section in our Bill of Rights concerning the law of libel.

This present seventh section limits the power of the press for good. I think all will admit that the morals and habits of the press and its tone, is more elevated than it was when this provision was made. It is a great deal higher in its tone than when it was announced as the law that "the greater the truth the greater the libel." I believe I know something about the business of conducting a newspaper myself. As publisher of a newspaper, I was able to govern my business without ever incurring a libel suit, and I was not very submissive either. I had my say. But still the abuses of the public service at this time are so much greater than they were then, that the press, in order to do any good, must have more privilege to probe and search out frauds and villainies. This is what we want. The provision that you have now materially restricts the power of the press. That great, and what ought to be, purifying power, cannot do all the good that it should; and while I agree that the general tone of the press is much higher than formerly, while personal abuse and exposure of personal affairs is not so much sanctioned by public opinion or the habit of the press, I believe the press is just as powerful as it ever was in regard to exposing great wrongs, if left without unnecessary trammels. I have nothing more to say about this subject now, Mr. Chairman, except to ask that it be fairly and deliberately considered. I know there is a great deal of feeling about it. If we want to make the press more useful, we must give it more privilege.

If it were for nothing else than to settle what is the law of libel, we should settle it here and now. What the law of libel is in Philadelphia, is not the law of libel in Pittsburg, according to the view which is held by the judges of the law as it now exist. It varies with the decision of this judge and that judge, and the same judge sometimes gives opposite constructions of the law at different times. To determine this, to show in plain terms what is an offence, we want to define the law. One of the greatest writers and thinkers of Britain, Jeremy Bentham,

gives this definition of libel and this reason why the press should be made more free :

"To write a paper so ill that nobody will read it ; to animadvert in terms so weak and insipid on great evils, and on the great crimes of wicked public men, so that no disgust is excited at the vice, and no apprehension in the evil doer, is a fair use of the liberty of the press. The so-called licentiousness of the press consists in doing the thing boldly and well, in striking terror into the guilty, and in arousing the attention of the public to the defence of their highest interests. This is held in prudent horror by corrupt men, and is punished by semi-animose and semi-cadaverous judges by captivity and exhausting fines."

Mr. H. G. SMITH. Mr. Chairman : I have listened with a great deal of pleasure to the argument of the gentleman from Indiana, (Mr. Clark,) and I do not think it is thoroughly well based or unanswerable. I am sorry the gentleman from Allegheny (Mr. W. H. Smith) has precipitated this question at this time, because I think it is the disposition of this Convention to discuss the proposition laid down by the gentleman from Indiana in general terms; and while I am as much interested in this matter of the law of libel as the gentleman from Allegheny can possibly be, I hope he will withdraw his motion for the present and allow the discussion to proceed on the general proposition advanced by the gentleman from Indiana.

The CHAIRMAN. The Chair will suggest to the delegate from Allegheny that it will probably facilitate business if he withdraws his amendment for the present.

Mr. DALLAS. I hope he will do so.

Mr. W. H. SMITH. Will the Chair please explain to me how it would facilitate business? What is to become of my amendment?

The CHAIRMAN. The delegate will see that it would be perfectly admissible to call for a division of all the sections. That may be done. The Chair does not say it ought to be done, but it can be done, and his amendment then would come in on the seventh section.

Mr. W. H. SMITH. I want to substitute this for the seventh section. I ask is there anything to prevent that? Would not that be right?

Mr. LILLY. I should like to ask a question. If the motion of the gentleman from Indiana is adopted by this Conven-

tion, does not that settle the whole question?

The CHAIRMAN. It does,

Mr. LILLY. Then the amendment of the gentleman from Allegheny would be precluded.

Mr. BROOMALL. Mr. Chairman : The adoption of the amendment of the gentleman from Indiana will not prevent us adding other sections, so that if this is adopted the gentleman from Allegheny may at once move his section as an addition.

Mr. CLARK. Mr. Chairman : My motion is to strike out the article reported by the committee and insert new matter. Now, when that is done by the committee, if it shall be done, that new matter will come up before the Convention, will it not?

The CHAIRMAN. It will on second reading.

Mr. CLARK. Would it not come up on first reading? ["No." "No."]

The CHAIRMAN. If adopted by the body it would not.

Mr. LILLY. I submit that if the motion of the gentleman from Indiana prevails, to substitute that article, it will put out of the way the subject matter of the amendment of the gentleman from Allegheny, because we shall have adopted a section in the article on that very subject, in the provision which the gentleman from Indiana moves to substitute for the other article.

Mr. J. M. BAILEY. While it is true that this Committee of the Whole has had referred to it the whole report of the Committee on the Declaration of Rights, yet I take it that all that is immediately before the Committee of the Whole at this time is the preamble.

The CHAIRMAN. The preamble is the last of all to be considered.

Mr. J. M. BAILEY. I hope if that be so that the gentleman from Indiana (Mr. Clark) will withdraw his amendment at this time. We are not considering that which is reported as the first article of the new Constitution, but we are considering the preamble to the Constitution.

The CHAIRMAN. The preamble is the last of all.

Mr. J. M. BAILEY. The preamble is the first clause in the article as printed and it has been read.

The CHAIRMAN. According to all usages, the preamble is to be considered last.



Mr. HARRY WHITE. Will the gentleman from Huntingdon give way while I address an inquiry to the Chair?

Mr. J. M. BAILEY. Certainly.

Mr. HARRY WHITE. May I ask what, in the opinion of the Chair, is the *status* of the question before the Committee of the Whole?

The CHAIRMAN. The question before the Committee of the Whole is the amendment of the gentleman from Allegheny to the amendment of the gentlemen from Indiana.

Mr. HARRY WHITE. Then I understand that the Chair has ruled that the amendment offered by the gentleman from Indiana to strike out and insert is in order. If it prevails it strikes out the entire report of the Committee on the Declaration of Rights. Then the question will be divisible when the question recurs on the article as amended.

The CHAIRMAN. It will be divisible.

Mr. HARRY WHITE. Very well. That is all I want to know.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Allegheny.

Mr. KAINE. I understood that the gentleman from Allegheny had withdrawn his amendment.

The CHAIRMAN. It has not been withdrawn.

Mr. KAINE. Then I desire to say a few words upon the general question; not upon the amendment of the gentleman from Allegheny, which I do not think has been offered in the right place. I was a member of the committee appointed by this Convention in its opening session to frame rules to govern its action, and in that Committee on Rules I was opposed to appointing a committee upon the Bill of Rights believing then, as I do now, that this Convention has no control whatever over that subject, it having been taken from them or excepted from their consideration by the Legislature in the act of Assembly under which we are organized. I have not changed my opinion upon that subject. I think that this Convention has no control whatever of the ninth article of the Constitution, it being expressly reserved by the Legislature from our consideration. I have no objection to some amendments being made perhaps in that direction, but if they are made at all I desire to see them placed in some other connection. Let them be placed in the article upon the

Legislature or the article upon legislation. Everything that is desired to be here accomplished can be accomplished there, and by that we can preserve what I believe to be the intention of this Convention upon that question.

The Bill of Rights, as we have it, was framed in 1790. It passed through the Convention of 1837-38 without the alteration of a *t* or the dotting of an *i*. We have had it as it came from the hands of the Convention in this city, signed as it was, and proclaimed here on the second day of September, 1790. It is our *magna charter* and every principle in it that is worth a farthing is taken from *Magna Charter* itself, as was the Declaration of Rights appended to the Constitution of 1776, and that Declaration of Rights of this Commonwealth, as proclaimed in this city in 1790, has been the model upon that subject for every State government in the United States.

There is not a Constitution in this Union that has a Declaration of Rights appended thereto, perhaps with the exception of Massachusetts, that has not some article or some principle in it, taken from that Declaration of Rights of the State of Pennsylvania. It is one of the most perfect articles in any Constitution in the Union. It cannot be bettered; and therefore, upon principle, I am opposed to changing it.

I am opposed to changing it in the first place, because I think this Convention has no power to alter or change or modify it; and I am opposed in the second place to changing it because I think it ought not to be altered, changed or amended. It is better than anything we can make now. No alteration that this Convention can make, nothing that we can insert in that article of the Constitution, can improve it in a solitary particular.

Upon a vote of this Convention taken at Harrisburg as to the right to change any part of this article, I am very well aware that a large majority of this Convention differed with me and some eighteen others on that subject. It may be the same here now, but that I cannot help. I, for one, will stand by the integrity of the old ninth article of the Constitution, the Bill of Rights, believing as I do that we have no right, in the first place, to alter or change it; and that, in the second place, even if we have the power, we ought not to do so. I would say, in the language of one of America's sweetest poets—

"Woodman, spare that tree !  
 Touch not a single bough !  
 In youth it sheltered me,  
 And I'll protect it now."

I do not desire, Mr. Chairman, to detain the Convention upon this or any other question. I have merely risen to express my dissent from any change in the ninth article of the Constitution; and having done so, that is all that I desire to do.

MR. DODD. MR. Chairman: Whether the question now before the committee of the whole be upon the amendment of the gentleman from Indiana, or the amendment to that amendment offered by the gentleman from Allegheny, the question as to the powers of this Convention becomes a material one. We cannot vote upon the amendment of the gentleman from Allegheny until we have determined whether we have any power to make any alteration in the Bill of Rights. While I feel my inability at any time to answer an argument made by the gentleman from Indiana, much more do I now feel my inability in a hurried manner to answer an argument carefully prepared by that learned gentleman. I agree with him in taking a very limited view of the powers of a Constitutional Convention. I consider that we are to a very great extent bound by the act of Assembly which calls us together. I believe that we are bound to submit all that we do to a vote of the people, and that we are bound to do this without regard to that requirement in the act of Assembly. I believe that we are but the representatives of the people for the purpose of forming a Constitution which the people may accept or reject, as they see fit; that we have not even the power of an attorney, who may contract for his principal, but have simply the powers of a scrivener, who prepares, and models, and shapes the instrument which the principal may sign or not, as he sees fit; or, to change the figure, we, like a physician, may prepare and prescribe the pill, but the patient may swallow it or not, as he may desire.

I base this opinion upon this theory: That the making of a Constitution is an act of sovereignty; that in a free government the sovereignty exists and must reside in the people; that they cannot delegate it or yield it up. If they should do so the existing government would be at an end. If we have the power of sovereignty, the Constitution would lie in fragments at our feet; each individual in this Convention would be a despot with

greater powers than any monarch in Europe. We could prolong our term; we could make our power perpetual; we could destroy the legislative, executive and judicial power of this government, and ourselves rule. Such an idea is absurd. We have no such powers. No free people would ever delegate such powers; they cannot do it.

Now, sir, the people voted that this Convention should be called for the purpose of preparing amendments or a new Constitution. I admit, with the gentleman from Indiana, that it was necessary that the Legislature should do something. The people as electors could simply vote that a Convention should be called. It was necessary that the people, through their representatives in Legislature assembled, should prescribe how, when and where the Convention should meet; of how many it should be composed; what the salaries should be; in what manner their work should be submitted to the people, and in general terms prescribe the mode and manner of their work. If the Legislature had not seen fit to do this, this Convention could not have assembled I admit; but that would have been a matter for the people to settle with the Legislature if it saw fit to disobey the will of the people expressed at the polls.

But I deny that our power, when once we are called together, depends upon the Legislature at all. It depends upon the people alone. It depends upon that vote of the people calling us together. If it depended upon the Legislature, it would have the power to disperse this body to-day. If we derive our power from the Legislature, the Legislature itself would have the power to make a Constitution. If it can prescribe the powers of this body it can make a Constitution itself and needs not call together a body of this kind; but the Legislature has no power to make Constitutions. It has no power whatever on the subject except a power which is given it by the Constitution to prepare amendments and submit them, to the people.

Here is where I take marked departure from the learned argument of the gentleman from Indiana. I say that the power of this Convention depends upon the vote of the people calling it together. If the Legislature had submitted the question to the people whether a Convention should be called for the purpose of amending certain portions of the Constitution alone, and that act had been adopted, then of

course we should be bound by it, because the people by their vote would have made it their act; but as there were no limitations in the original act, as the people from whom we derive our power decided that the Convention should be called to revise the whole Constitution, not portions of it, the Legislature has no power to make any restriction whatever.

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

Mr. DODD. Certainly.

Mr. KATNE. After the election had been held under the act of 1871, and the people decided by a large majority that a Convention should be assembled for amending the Constitution, suppose then the Legislature had refused to pass any further law upon the subject, what would have been the result?

Mr. DODD. As I remarked before, unless the Legislature had seen fit to call us together, we could not have met. The existence of the body depends upon that act of the Legislature entirely. But, while it was the power and the duty of the Legislature, in accordance with the vote of the people, to call the body together, it had no authority to restrict the powers of the Convention, when called together, as to what the result of its deliberations should be, or as to what portions of the Constitution it should consider and amend.

Mr. STEWART. Could not the people have enforced that through a subsequent Legislature? If the Legislature that was called together subsequently to that vote had refused to call this Convention, could not the people have enforced that call through a subsequent Legislature? Is not that an answer to the question of the gentleman from Fayette?

Mr. DODD. If the Legislature after that vote of the people had not seen fit to call this Convention together, the people would have the power that they have in all cases to send new men to a subsequent Legislature that would fulfill their will. That is the only power the people have over representatives in order to enforce their wishes.

Why, Mr. Chairman, if the Legislature in passing the act calling us together could limit our powers, could say that we should not take into consideration certain portions of the Constitution at all, if it could restrict us from considering the Bill of Rights, it could restrict us from considering any portion of the Constitution whatever; and if it could do it in the act

passed to call us together, it could do so at any time. In other words, if it had the power at all, it would have the power yet, if in session; and when the next Legislature assembles if our work is not then submitted to the people, it could restrict our powers over other articles, perhaps the article on the Legislature itself. If it has the power at all, it is a continuing power, and we are but the subjects of the Legislature in all our deliberations.

The author quoted by the gentleman from Indiana so extensively substantiates this view. On page 353, Mr. Jamison says:

"It is in general the right and duty of the Legislature to prescribe *when* and *where* and *how* a Convention shall meet and proceed with its business and put its work in operation, but not *what* it shall do. Without restriction as to the former particulars the Convention would be wholly independent of the existing government, and with restrictions as to the latter a mere echo of the Legislature which called it together. It would be absurd to prescribe to a deliberative body what the results of its deliberations should be."

There are checks and balances in fundamental legislation just as in ordinary legislation. There are different branches of the government which operate co-ordinately in the making of a Constitution. There is, first, the Legislature in submitting to the people the question whether a Convention shall be called; next the people, as electors, in voting upon that question; then the action of the Legislature again in prescribing in what manner the Convention shall be called together. The Convention itself when called has certain powers, but the people are the final arbiters. The powers of each of these bodies, the electors, the Legislature and the Convention, should be kept as distinct and separate as the powers of the legislative, executive and judiciary departments in ordinary government. Our power is to make a Constitution or prescribe amendments for the people to vote upon. We derive that power directly from the people as electors. We are responsible to them alone. When they put limits upon us, we are bound by them, not otherwise. We are here entirely independent of the Legislature, so far as the duty of prescribing amendments to be voted upon by the people is concerned. If the Legislature can limit us in one particular, it can in all. If it can do it at one time, it can at

another; and even to-day it could utterly destroy our powers if it were in session.

I hold, therefore, that we are not restricted by the subsequent act of the Legislature. I hope the amendment of the gentleman from Indiana will not be adopted. I hope that the members of this Convention, through impatience, will not accept the ninth article of the present Constitution in bulk. It may take some time to go over the few changes that have been suggested by the Committee on the Declaration of Rights; but some of them are wise and should be adopted, and we shall not be fulfilling our duty to the people unless we calmly and deliberately consider them. I am glad that this Convention is getting impatient in some respects. I hope it will get impatient enough to keep speakers, myself included, to the point on all occasions. But I do hope it will not get so impatient that it will cease to act as heretofore, and carefully, slowly, and wisely consider every question that may be submitted to it.

Mr. BOWMAN. I should like to ask the gentleman from Venango one question before he takes his seat: Must not all delegated power be accepted by the grantee upon the terms and with the limitations which are expressed in the grant?

Mr. DODD. Certainly; but I deny that the Legislature delegated to us our powers. The Legislature must first possess the power before it can delegate it. If it can delegate us the power to make a Constitution, it has itself the power to make Constitutions.

Mr. NEWLIN. Mr. Chairman: I utterly repudiate the political heresy which is enunciated in the work on constitutional law which has been read from so extensively by my friend from Indiana. That book is a very valuable one in the matter of statistics, and it furnishes a large amount of information as to the workings of the different Constitutional Conventions which have assembled in the United States. It will be observed, however, that the author started out with a particular theory, and that the whole object of the work is to sustain that preconceived idea of the law; and in order to do that continually, the precedents set by numerous Conventions are set aside and eliminated from consideration by being pronounced revolutionary and irregular. In other words, wherever the action of a Convention agrees with the theory of the writer it is cited as a precedent, and wherever it does not it is set

aside! Now, sir, the effect of this theory has been well said by the gentleman from Venango to be such that it cannot possibly be accepted by this Convention for the obvious reason that if, after the people have voted upon the general question of calling or not calling a Convention, the Legislature can proceed by a subsequent act to limit the powers of that body in one particular, it can do it in all. Many matters that have come before this body on questions affecting the Legislature, questions affecting legislation, and other matters which have been acted upon, might just as readily and with equal propriety have been removed from the jurisdiction of this body by the Legislature as the article known as the Declaration of Rights.

The Conventions of 1776 and 1790 have been alluded to, and it struck me that the gentleman from Indiana did not answer the question propounded to him by the gentleman from Mercer, with directness. In fact it was necessary, in order to sustain his theory, that he should evade that question. The Legislature of 1789, after the council of censors, the constitutional body, had failed to take any action—that Legislature not only without any authority conferred by the Constitution, but in direct violation of the functions of the council of censors, did undertake to call a Convention; and it is a matter of fact that the Legislature of 1789 called that Convention upon one month's notice to the people, and attempted in that way to secure a Convention of a particular complexion, which attempt failed signally. There were two parties in the State at that time—one which was in favor of the Constitution as it stood and another which advocated radical changes. The persistent and steady refusal of the council of censors to put in operation the machinery by which they could be made, resulted in producing a public feeling in this city which culminated in a riot, and the militia were called out in order to preserve the peace; and it was after that the Legislature passed the act which called together the Convention of 1790.

Now, sir, it will be observed that the present Constitution does not anywhere confer upon the Legislature the power to call or provide in any way for the assembling of a Convention; and either we are not here legally, or we must accept the logic of the situation, and we must come to this conclusion, that a Constitutional Convention is nothing more nor less

than a direct action of the people in their primary capacity, outside of and beyond the Constitution, and nothing else than a peaceable revolution accomplished in a form that is conducive to public order.

The original act of the Legislature, by which the question of "Convention" or "no Convention" was submitted to the people, prescribed no restrictions whatever upon this body. It simply submitted the broad question of calling a Convention. The grant of power to this body is derived from that direct vote of the people, and all the Legislature could subsequently do was to provide the necessary machinery for carrying into effect the will of the people as expressed in that vote.

The Rhode Island case was cited here by the gentleman from Indiana, in one part of his argument, but that case in no way meets the question presented to us. There a Convention was called by a vote of the male citizens of the State in pursuance of a resolution of an immense mass meeting. The suffrage in that State was restricted at the time, and a very great part of the persons voting upon the proposition to call a Convention were not electors by the then law of the State; and when that question came to the Supreme Court of the United States, it was not decided upon the merits, but upon a question of jurisdiction; so that the merits of the question never have been decided judicially in any court of highest resort.

I am in favor of the amendment of the gentleman from Allegheny (Mr. W. H. Smith) to a certain extent; but it goes further than I am willing to advocate, and being an amendment to an amendment and not susceptible of any change, I trust the gentleman will either withdraw it or that it will be voted down, so that the question can fairly be brought before the Convention.

MR. DE FRANCE. Mr. Chairman: It is pretty generally known, I believe, in this body, that I do not take up a great deal of time; but I desire to call the attention of the committee to the reading of the act by which we were created. "The question of calling a Convention to amend the Constitution of this Commonwealth shall be submitted to a vote of the people at the general election to be held on the second Tuesday of October next." That is the authority by which we came here. The people voted upon that question, and that question alone. Is there any possible limitation there? We are here to

amend the Constitution of Pennsylvania. Is not the Bill of Rights a part of the Constitution of Pennsylvania? The very fundamental part of the Constitution?

I think that some parts of the ninth article ought to be amended. For instance: the Supreme Court has decided that all crimes created since 1776 by statute can be tried without a jury. That ought not to be in this country, nor in this State. They have decided, not only in one case, but in seven or eight cases, that any crime or misdemeanor, no matter what its punishment may be, if the Legislature so direct, can be tried without a jury trial. That ought not to be tolerated in this country, because in times of great political excitement the Legislature might play the devil with the people. [Laughter.] I have had some reason to know that fact.

Again, there are a great many people in this State, and many members of this Convention, who think that the subject of libel ought to be regulated somewhat. I am not one of that number; but there are a great many members of this Convention who do believe there ought to be some regulation on that subject.

If the doctrine that is advanced here be true, a corrupt or venal Legislature, if they choose, might not call a Convention at all, or if they did call a Convention, they could so limit it that it could do nothing at all. That is nonsense, in my opinion.

I do not know that I shall have the strength to submit my views on this subject at any length, which will be a good thing for the Convention. [Laughter.] I did not hear considerable of the argument of the gentleman from Indiana (Mr. Clark.) I have no doubt it was very able, because everything that he says has ability about it. But, sir, there have been three Constitutions adopted in this State. Two of them were not submitted to the people at all. One of those Constitutions was framed by a Convention called in direct opposition to the Constitution then existing, and the people went on and adopted a Constitution directly contrary to what they had agreed to before.

Now let us see what the gentleman proposes to put into this new Constitution. It is the precise article of the old one. What is it?

"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 think proper."

Is that by the Legislature? It may be by the Legislature, but is it in all cases?

No, sir, it is not. The history of this country has not so decided either. I am in favor of this old article. I believe in it.

Mr. Chairman, this government is founded on revolutionary principles. The whole theory of this government is upon revolutionary principles, and I say we may change this Constitution, not legally, not by an act of the Legislature, but by the people either peaceably or forcibly, and the right is so recognized there.

Mr. DARLINGTON. I propose to vote for the amendment offered by the gentleman from Indiana, although I do not concur with him or perhaps with other gentlemen in the reasons which may impel him or them to their conclusion. When this question of the power of the Convention was under discussion at Harrisburg it will be recollected that in the committee which reported the resolutions for the appointment of a Committee on the Bill of Rights, it was a subject of discussion as well as in the Convention when that report came before it, and every member who was there will recollect that while we all maintained, at least all of us who agreed on that subject, the right of the Convention to appoint a committee upon the Declaration of Rights, and if necessary to consider any propositions that might be made and decide upon them as upon all others, yet there was a very general if not universal disclaimer, from all parts of the Convention, of any wish or desire on the part of anybody to change a single line or letter. While asserting the right to do it, no one expressed any desire to do it; and I understood that to be almost the unanimous sentiment of all the delegates in the Convention. We may therefore fairly vote with the gentleman from Indiana without being committed to the reasoning which has led him to that conclusion; and I presume to say that there are many members of this Convention who, whether they take the occasion so to express themselves or not, will be found ready to vote with the gentleman in his proposition, although we may not agree with him in the reasons which have led him to that conclusion. I wish for myself to say that I desire no

change made in the Bill of Rights, because I think what has served sufficiently for our protection through the last century will be found to be sufficient for the next. I therefore join with the gentleman from Fayette in the poetical appeal:

"Woodman, spare that tree!"

Let the Bill of Rights remain if you will let nothing else remain of this venerated instrument.

Mr. MANN. As I propose to vote for the amendment of the gentleman from Indiana, I deem it due to myself to say that I shall do so for very different reasons from those given in his very able and interesting argument. I cannot subscribe to that argument. I subscribe very heartily to the argument made by the gentleman from Venango and repeated by the gentleman from Mercer. I think the arguments made by those gentlemen are unanswerable.

While I maintain that the Legislature had no power to restrict the action of this Convention, yet I think the action of the Legislature is entitled to respect, and that this act of Assembly is to be taken as expressing the wishes of the people of Pennsylvania on this subject, and therefore we are bound to respect it unless we shall find that since the action of the Legislature, the people, in discussing this question, have, through the usual means of expressing public opinion, dissented from it. As there has been no dissent on the part of the people, so far as I know, except a very feeble effort on the part of a few individuals, I think we are bound to respect that action, unless gentlemen show us that there is a pressing necessity for a change. I shall hold myself ready to listen to arguments on that point; and that is the only point that I propose to listen to argument upon—the necessity for making some change in the Bill of Rights.

I listened to the argument of the gentleman from Allegheny (Mr. Smith) with great attention. I hold with him that it is the right of this Convention to change the Bill of Rights, if they choose to do so; but I think we ought to pay great deference to the action of the Legislature as being the voice of the people of Pennsylvania, and we ought not to disregard it unless it can be shown beyond a reasonable doubt that the people demand some change. I submit, with great deference to the gentleman from Allegheny, that he has not shown that the people are desiring any reformation in the direction in which he

argues. In a few isolated cases, a very few individuals in this Commonwealth are making that demand; but I believe that the great mass of the people acquiesce in the Bill of Rights as it stands. They would prefer that some inconvenience should be suffered rather than that an instrument that has been held sacred almost since the organization of this government should be changed.

Sir, something ought to be held to be permanent in Pennsylvania, and the Bill of Rights, as was said by the gentleman from Fayette, (Mr. Kaine,) has been held up, not only to the people of Pennsylvania, but to the people of all the Union, as an instrument that it would be very difficult to improve. I believe that is the general sentiment through the State; and for one I do not believe that the amendment of the gentleman from Allegheny would improve it in any particular; that more injury to the public than good would come from the adoption of his amendment. But this is not the reason for which I will vote for the amendment of the gentleman from Indiana. I will vote for it upon the sole ground that I believe the action of the Legislature in passing this act of Assembly was the expression of the people of Pennsylvania; was an instruction to us that on that point they desired no change. If gentlemen think that the Legislature did not express the will of the people I hold them at liberty to disregard it. I hold myself at liberty to do so, or any other delegate, on the conditions above stated; but that it is an instruction to us, and that we shall be bound to regard it unless we can satisfy ourselves that there is urgent necessity for disregarding it.

MR. BROOMALL. Mr. Chairman: I am in favor of the motion of the gentleman from Indiana, but for a totally different reason from that which he has given. I listened to his argument with a great deal of satisfaction and pleasure, as I listen to ingenious arguments always, particularly when I do not concur in them. I am not going to try to refute that argument here because I want the gentleman to remain of the mind he is, long enough to vote my way on his motion.

I am in favor of the motion because I prefer the amendment to the article as reported by the committee, and shall therefore vote for it just as I would vote for any other amendment which I preferred to that which was proposed to be amended.

It strikes me as a little singular—and I hope the gentleman will not be shaken in his opinion, however, by what I am going to say now—that he has come to the conclusion to which he has, because if the Legislature can direct us that we shall not make a specific amendment it can direct us that we shall not make any amendment; it can direct us that we shall make any amendment; it can direct us that we shall make just such Constitution as it shall prescribe, and hence it may avoid the Constitution altogether, and hence, also, as to the Legislature we have no Constitution, for they may raise a committee of their own body and call it a Convention, and direct that committee to report just what Constitution they want, and to alter and annul it at pleasure. I hope the gentleman, however, will not place too much weight upon this little statement of my argument. I want him, as I said, to remain of his opinion long enough to vote my way.

Now, I believe the present Bill of Rights to be better than that reported by the committee in almost all the particulars in which they have amended it, and that is why I intend to vote for the amendment. I have come to the conclusion that the Constitution of 1838 (as I think I remarked here once before) is the second best Constitution that exists in the United States; that the very best one was the Constitution of 1790, and I have made up my mind to cling to the Constitution of 1838 in every particular except where an absolute necessity is shown for its change.

I do not believe in disturbing the old landmarks. I admit our right, but I deny the propriety of changing, and before I vote for any change, even in language, in the Constitution of 1838, and particularly in the Bill of Rights, I must be shown not that the change is an improvement of phraseology, not that it might be a possible advantage, but that there is a public necessity to make it. I will not deny here that the fact that the Legislature said we should not disturb the Bill of Rights ought to have some little weight as a declaration of that many good men upon the subject, constituents of ours, petitioners, if you choose to call them so, that they think it ought to remain as it is. And it confirms me in my opinion that it ought to remain as it is to find so excellent and sensible a body of men as the Senate and House of Representatives among our constituents who have desired us, by an act of Assembly

in form, but really by petition in effect, that we should let it remain as it is. I therefore will vote for the amendment of the gentleman from Indiana.

Mr. BUCKALEW. Mr. Chairman: I was not present at Harrisburg when the question of the power of the Legislature to bind the Convention in regard to the extent of its powers was considered, and for that reason I desire before the question passes from debate to say a few words.

The first question as it occurs to me is this: Whence do we derive our powers? Some gentlemen argue that we derive our powers from the Legislature. That was the argument of the able member from York, (Mr. J. S. Black,) on a former occasion, and it is substantially repeated, perhaps unconsciously, this morning by gentlemen who have spoken. My idea is that we do not derive our powers from the Legislature in any sense whatever; that we derive them from the people of the State, and from the people of the State exclusively, and derive them from the people directly also, and not through the Legislature as their agent for conferring them.

Now, how clear is this? The Legislature of the State submitted to the people the question, shall there be a Convention? The people said "yes, we will have a Convention, appointed by us and representing us, to form a new or amended Constitution."

Can any one question then the source of our authority, and that is exclusive? Under this popular vote what did the Legislature do? What was their duty? It was simply to provide the ordinary facilities necessarily to be created by law for the voting by the people for the selection of the delegates, for the regulation of the time and place of meeting, so that this popular power which was decreed by the people could be exerted in an orderly manner. There, in my judgment, the function of the Legislature with reference to this Convention began and ended. It never had and it has not now, any additional power or authority with reference to this whole question of amending the Constitution.

Now, having ascertained whence our power is derived, the next question is this: Is this a Convention of general or of limited powers? If our powers are general and conferred upon us directly by the people of the State, it is not possible to predicate an argument, as has been done, upon legislative authority;

for those powers if general cannot be curtailed and limited by the legislative authority. If, on the contrary, this is a Convention of limited powers, then we are to ascertain what the limitations are and to conform to them.

In this State this question ought not to be one of difficulty. We have had Conventions of both kinds. That of 1776 and that of 1790 were Conventions of general power and authority over the subject of Constitution making, and the instruments prepared by those Conventions were by them put in force of their own inherent and just authority, and they were frames of government under which the people of this State have lived ever since the Declaration of Independence; for we live under the Constitution of 1790 now, as the Convention of 1838 only proposed *amendments* to it.

In 1837-8 our third Convention was held, and that was a Convention of limited, of restricted powers. In 1835 the Legislature passed a statute that the people of the State should vote upon the question of calling a Convention to prepare amendments to the Constitution of the State, to be submitted to the people for their adoption or rejection, "*and with no other or greater powers*"—that was in the statute. The people proceeded to vote accordingly and decreed that a Convention of that character should be called; and then in 1836 followed the convention act, which provided for the election of the members of the Convention, not at the October election of that year, but at a special election to be held early in the month of November. The Convention of 1837-8 when it met, therefore, was limited. It could do nothing except propose amendments to the Constitution; it was compelled to submit its whole work to the people of the State for their adoption or rejection.

We in 1872 and 1873, are engaged in the fourth constitutional proceeding in this State for the revision of our fundamental law. And as I have already shown, this is a Convention of general powers, without any limitation whatever imposed by the people, by those who are the only authority from whom we could derive our powers, over this subject of amendment.

The gentleman from York on the former occasion made an argument of unanswerable force; his conclusion was irresistible if you admitted the premises on which the whole was founded, which was



that the Legislature of the State created us, and conferred upon us the authority which we hold. He argued very accurately and unanswerably that the grantee must take his grant upon the conditions which the grantor imposed when the authority was conferred, and that inasmuch as the Legislature had said that we should not touch this ninth article of the Constitution nor establish a court of equity in this State, nor do certain other things, therefore we were bound by those limitations; the grantor, the Legislature, having imposed those limitations when it conferred upon us our powers; but the whole of his argument falls to the ground when we come to understand that our authority was not conferred by the Legislature; that it was not competent for the Legislature in point of fact to confer upon us any power; that we derive our power and authority from an independent and superior source, from precisely the same source from which the Legislature itself derives its powers. Well, what are those powers of the Legislature with reference to amending the Constitution? We know what they are.

The Legislature cannot change one line or word in the Constitution. The Legislature cannot appoint any authority to amend that Constitution under any of the grants which have been conferred upon it. The Constitution itself has regulated the authority of the Legislature. It says that the Legislature may, by a majority of each House, pass propositions of amendment at any session, and then if both Houses at the next session shall re-pass them, the Legislature shall be authorized to submit them to the people of the State for their action, and if they shall be accepted by the people they will become a part of the fundamental law. That is the only authority which the Legislature has with reference to the amendment of the Constitution. The people have carefully limited and guarded the Legislature from any control over amendment in any way whatever, the power of amendment resting exclusively with the people of the State.

It has been argued by men of distinction in this country—it was argued in the case of Kansas—that no Convention can adopt any amendment or put any constitutional work in force, without a popular vote upon it. That has been argued as a question of power. What is the answer to that? Manifestly that the people of any State would no longer be sovereign,

would no longer possess the sovereignty of their Commonwealth, if they were stripped of the power to appoint agents to amend their Constitution. Think of the absurdity of the proposition that a sovereign power could not act through agents at all, but only directly, itself, in all the details of any proceeding in amending its constitutional law? Why, this argument, if carried to its ultimate limit, would prevent the Legislature of the State from ever enacting a statute. The people of the State could not confer upon the Legislature authority to pass a law definitely and conclusively; a Legislature would be obliged always after framing a statute to submit it to a popular vote in order to give to it the sanction of the sovereign power of the Commonwealth. No such doctrine is admissible in legitimate constitutional argument.

Mr. NILES. Will the gentleman from Columbia pardon an interruption?

Mr. BUCKALEW. Yes, sir.

Mr. NILES. In what way can the people impose any limitation or restriction upon this Convention except by an act of the Legislature?

Mr. BUCKALEW. I have answered that already. The people in ordering a Convention will order it with general or limited powers as the proposition submitted to them may prescribe. It has been done both ways in this State, as I have already shown.

I have one additional remark. I have so far in my references on this subject conformed to the general course of argument which has been followed in the committee of the whole. But this question will be presented in some other form. Before we adjourn we shall find the necessity of exercising that power which the people have conferred upon us without looking to the Legislature for authority. In fact, if this doctrine which is presented here be true, this Convention can do nothing with reference to the submission of our amendments, the mode and manner in which they shall be voted upon, in regard to the returns of election, or to protect the popular proceeding upon our work against fraud and wrong, as by providing for a mode of contest or for determining a disputed vote upon our amendments; for the Legislature having made certain regulations upon this subject, as a matter of course if they have power to bind us, we are concluded by what they have done. We shall just as much transcend our duty and condemn

the authority of the Legislature by adding to the provisions which they have made as by disregarding those which they have enacted. The question of power is precisely the same, and it is by reason of this rather than with reference to the importance of the pending question, that this debate is important.

I hope, therefore, that the Convention will reject the pending amendments, and that we shall proceed to consider directly the report of the Committee on the Declaration of Rights. Now, what is that? They have reported the whole of the ninth article of the present Constitution, with the exception of two or three slight amendments; and whenever we reach the sections which contain those amendments, of course we can adopt or reject them at our pleasure. It will facilitate our work to get at the report of the Committee on the Declaration of Rights promptly and consider it section by section. We shall not, in any event, be compelled to change the ninth article in any respect whatever, unless we shall choose to do so.

The CHAIRMAN. The question is upon the amendment of the gentleman from Allegheny (Mr. W. H. Smith.)

Mr. T. H. B. PATTERSON. I ask for a particular statement of the question before the committee of the whole.

The CHAIRMAN. The amendment as proposed will be read.

The CLERK. It is proposed to strike out the seventh section of the article as reported and insert:

"In all prosecutions for libel, the truth may be given in evidence as well as the sources of information on which the alleged libel may have been based; and if it shall appear to the jury that the matter charged as libellous is true, or that it was based on reliable information and was not a malicious invention, but was published for good motives and justifiable ends, the accused shall be acquitted."

Mr. H. G. SMITH. Mr. Chairman: I desire to ask what will be the effect of voting this amendment down at this time? In my judgment, if we vote it down now the question will recur again.

I take it that even if the proposition of the gentleman from Indiana should find favor and pass, still this article as reported would come up again in the Convention itself and be considered there. With that understanding of the position of affairs before the committee at this present moment, while I would heartily vote for the proposition of the gentleman

from Allegheny and support it, and while I hope to see some such amendment carried, I shall now vote against the proposition in order to remove the question at present from the consideration of the committee of the whole, and to allow us to reach the single question presented by the gentleman from Indiana, as a broad proposition, and thus enable us to go to work in more regular order.

The amendment of Mr. W. H. Smith was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Indiana (Mr. Clark.)

Mr. T. H. B. PATTERSON. Now, Mr. Chairman, I want to know precisely what we are voting on.

The CHAIRMAN. The question is on the motion of the gentleman from Indiana to strike out the article reported by the Committee on the Declaration of Rights and insert the ninth article of the present Constitution.

Mr. T. H. B. PATTERSON. As I understood the motion of the gentleman from Indiana, it did not include the preamble, and the motion as put would include the preamble.

The CHAIRMAN. It would include the preamble, because it would strike out the whole article as reported.

Mr. CLARK. My motion was to strike out the report of the Committee on the Declaration of Rights and insert the ninth article as it has heretofore existed and as it now exists in our Constitution; and inasmuch as the Declaration of Rights as it heretofore has existed has no preamble, my motion, if adopted, would leave the article without a preamble. The preamble could be adjusted afterward.

Mr. T. H. B. PATTERSON. Then the motion of the gentleman from Indiana would not include the preamble. I want it distinctly understood what the question is.

The CHAIRMAN. The Chair understands it to be to strike out the entire report.

Mr. WHERRY. Is it in order to ask for a division of the substitute?

The CHAIRMAN. No, sir.

Mr. WHERRY. Is not the amendment divisible?

The CHAIRMAN. The Chair thinks it is not divisible. It is the most compact question that the Chair has ever seen in a deliberative body.

On the question of agreeing to the amendment proposed by Mr. Clark, a di-

vision was called for, which resulted thirty-seven in the affirmative and forty-nine in the negative. So the amendment was not agreed to.

The CHAIRMAN. The question now recurs upon the article reported by the Committee on the Declaration of Rights. The first section will be read.

The CLERK read as follows :

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.

Mr. MACCONNELL. There are two lines preceding the first section which are introductory.

The CHAIRMAN. That matter being in the nature of preamble will be considered last.

Mr. MACCONNELL. Then this section is just the same as it is in the old Constitution.

The section was agreed to.

The CHAIRMAN. The second section will be read.

The CLERK read as follows :

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.

Mr. MACCONNELL. This is precisely the same as the old Constitution.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows :

SECTION 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. 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.

Mr. MACCONNELL. This is just the same as in the old Constitution.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows :

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.

Mr. MACCONNELL. In this section there is a slight change from the old Constitution. The old Constitution had the word "a" before the word "God." This strikes it out. The present Constitution reads: "That no person who acknowledges the being of a God," &c. We have taken out the article "a."

Mr. BROOMALL. I should like to know the reason of the change. I should like to know why this has been changed from the language of the old Constitution?

Mr. MACCONNELL. In answer to the gentleman's question, I think the reason given was that, taken as it was in the old Constitution, it might refer to Juggernaut just as well as to Almighty God.

Mr. BROOMALL. I move to amend by inserting the missing word. The old Constitution in that respect answered every purpose very well, and I do not think it necessary to make any change now.

Mr. GIBSON. Will the gentleman from Delaware allow me to explain the object of this omission?

Mr. BROOMALL. I shall be glad if the gentleman will do so.

Mr. GIBSON. As a member of the Committee on the Bill of Rights, I will say that one reason why the article "a" was stricken out, was on account of the preamble expressly recognizing the existence of Almighty God and invoking His aid. Therefore it was thought that the word "a" might be extremely inconsistent therewith.

Mr. BROOMALL. I have moved this amendment for the very reason that governed our forefathers in originally framing the section in the way they did. If it is the intention of this Convention to make a sectarian instrument in any sense of the word, then the Legislature should have controlled us in this particular more strongly than I am afraid they did. The object of our forefathers was not to require any man to adopt any particular creed; but they did require that he should, to be qualified for places of trust, so far acknowledge the binding force of a higher law upon him as to believe in an overruling Providence. That I may believe

in the particular God of the majority of the people here is no reason why I should impose upon those who do not believe in Him any necessity to adopt my creed. We have just passed a section in which it is said that no human authority can, in any case whatever, control or interfere with the rights of conscience. Now, if it is meant by this to put any disability upon those whose consciences do not shape themselves exactly with ours, if it is proposed by this to offer any inducement to men to shape their consciences just like our own and so make hypocrites of them, then the amendment which I have offered is not proper and should not be adopted; but I think our forefathers were right in so guarding this section as not to contradict the one immediately preceding it.

The gentleman from York (Mr. Gibson) says that the article "a" was stricken out in order to make this section comport with the preamble. When the preamble comes up, I propose to have something to say upon it; but at this time I want the government of my country not to touch with its polluting hand anything so sacred as the religion of the people. I want it to let that alone. I want conscience to be as free as the air. I want nobody to say to me: "You do not believe in my God; therefore you are not to be entrusted with the right of talking before a jury or holding any office of trust or profit."

Mr. CUYLER. Will the gentleman from Delaware pardon a question?

Mr. BROOMALL. Certainly.

Mr. CUYLER. I ask the gentleman why, on his theory, he should require people to have any belief of any kind? Why require them to believe even in a pagan god?

Mr. BROOMALL. I am not sure that the Constitution would not be better without even that provision. I am not sure but that it would be more consistent with the christian religion to repudiate in our Constitution all reference to systems of religious belief; and I should be willing to dispense with the provision altogether. But it has been held by a great many well meaning men that a belief in an overruling Providence has some effect upon the consciences of men; and I am of the same opinion myself; and therefore, while I am willing to let the provision remain as it is, as our forefathers put it, I am not willing to have it spoiled by being made so as to correspond with a sectarian preamble.

The CHAIRMAN. The question is on the amendment to insert the word "a" before "God."

The amendment was agreed to, there being, on a division: Ayes, forty; noes, thirty-three.

The CHAIRMAN. The question recurs on 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 5. That the 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.

Mr. DARLINGTON. Here, Mr. Chairman, is a material departure from the old Constitution, it seems to me, prescribing that the military power shall in no case interfere with the freedom of election. To that I entirely subscribe; but that, I suppose, is not the object, precisely, of introducing this language. I do not know, for no member of the committee has yet explained it. It probably has reference to the events of recent times when the military of the General Government were necessarily called out in order to secure freedom of election, and prevent rioting, and bloodshed, and mobs.

Mr. HEMPHILL. Where?

Mr. DARLINGTON. In New York, and it might have been necessary, possibly, in Philadelphia. Does anybody object to the employment of the necessary force, civil or military, in order to insure the freedom and peace of elections? Is it intended to prevent interference by the government? We recollect that on one occasion within the last few years it required all the police at the command of the city authorities, and it required, also, the sheriff, with his posse, to keep the peace at an election here, and to prevent undue interference with it by persons not having the right to vote. If it is intended to prevent the interference of the proper peace officers in order to secure the freedom of elections, then I am opposed to it, because I think it is right for the government to make the elections free.

Our election laws are intended to secure the right of suffrage to every one entitled to it under the Constitution. Nay, we have, perhaps, the best election law of which any State can boast. We make it a penal offence for any one to interfere with the freedom of an election, and we make it punishable by fine and imprisonment; and the proper construction that

the courts have given to this is that if any individual shall even make it unpleasant for a quiet voter to go to the polls he is a violator of the law. Now, to all this I fully subscribe. Every man who has the right to vote should in no wise be impeded by military or by civil authority; but I do not deem it necessary, because the past history of the State has not shown it to be necessary that we should say anything in the Constitution with regard to the military authority interfering with elections.

Mr. H. G. SMITH. Will the gentleman allow me to ask him a question?

Mr. DARLINGTON. Certainly.

Mr. H. G. SMITH. Did the gentleman read the next to the last annual message of Governor Geary?

Mr. DARLINGTON. I generally read them all.

Mr. H. G. SMITH. Did he read the remarks which the Governor made there in regard to military interference with elections in this Commonwealth?

Mr. DARLINGTON. I suppose I did, but I do not now recollect them. But what of that? Governor Geary was the Governor of the State, but he was no more than a man. He knew no more than other citizens knew about that matter.

I say again that while I am entirely opposed to any interference whatever with the freedom of elections, and would go as far as any man to punish improper interference, no provision of this kind is necessary. Why do you say that the military power shall not interfere? Why do you not say that the civil power shall not interfere?

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

Mr. DARLINGTON. Yes, sir.

Mr. BRODHEAD. Does he not know that the military were called out in the city of Philadelphia two or three years ago to help perpetrate election frauds?

Mr. DARLINGTON. No. If they were, I do not know in whose hands they were; whether they were in the hands of the Democracy or not; I do not know even that, for I do not remember. Corruption exists in both parties—

Mr. HEMPHILL. Allow me to ask who is to judge of the necessity of calling out the military?

Mr. DARLINGTON. Of course the executive power.

Mr. HEMPHILL. Of the United States or of the State?

Mr. DARLINGTON. The executive power of the country necessarily. The gentleman will find out when he gets to be a little older, as we all find out when we get older, that so far as regards the election of officers of the general government, such as members of Congress, the power resides in Congress to say that the elections shall be free, and as to State elections it devolves upon the Legislature and the Governor of the State to see to it.

Mr. HANNA. I can inform the gentleman from Chester that at the election held in Philadelphia two years ago it was necessary to call upon the military of the United States to preserve the peace at the polls and to enable voters to vote.

Mr. BRODHEAD. Who says it was necessary?

Mr. DARLINGTON. It is enough for us that the government decides; and we are bound to obey.

Mr. MACCONNELL. I should like to ask the gentleman a question. What part of the section does he propose to strike out?

Mr. DARLINGTON. Just the part that is added to the old Constitution.

I recollect very well within the last few years that there was all the police authority at the command of the mayor, and all the police authority which the sheriff could muster, brought together or in collision—I do not know which—in order to secure the freedom of election in Philadelphia. May it not be necessary that the military authority as well as the civil may be called in? I do not know. We do not need it in the country; but in the city, if they have not needed it, probably they would have been better to have it. If they have had any authority here, they should perhaps have had more. What I mean to say is that we have no occasion to put into the Constitution a provision of that kind because nothing that we can say there will do anything but mischief.

If certain men who are badly disposed in a crowded city are determined to prevent honest, sober voters from going to the polls, they can easily do so, if there be no power to prevent it; and with your prosecuting officers and your courts as they are, if they are half as bad as members say they are, you could never get such men convicted. Now, what is the redress? The trouble is in the large cities. We want freedom and purity of election. We have been striving to get into the Constitution something that will secure it; but they are all of no avail if the polls may be taken possession of by

a mob of rowdies and there be no power to interfere with them. If the civil authority should be unable to remedy it, the military power must be called in, the laws must be respected and the Constitution must be observed, and this sacred right of the freedom of elections and the equality of elections must be maintained even though it be necessary to call in the military power to do it.

MR. LEAR. Mr. Chairman: It seems to me that, although what the gentleman from Chester says is very true, there can be no objection to this addition to the section contained in our present Constitution. Although I am very far from admitting that an amendment should go into the Constitution merely because it can do no harm—an argument which I have heard used in favor of very many amendments—yet I think there may be some explanatory virtue in the subsequent clause of this section which will satisfy many people and may do good.

I have referred to the argument that an amendment can do no harm; and I say that if we enumber the Constitution with things that in themselves would be harmless somewhere else, we are doing a harm to the Constitution; and as the delegates of the people of Pennsylvania for the purpose of amending the Constitution, whenever we enumber it with that which belongs somewhere else, we are doing harm; and although I have heard the argument used over and over again on this floor that because an amendment or a section can do no harm, therefore it ought to go in, I say that the very fact that no better argument is given for it than that shows that it does harm to put it in the Constitution. In this particular case, however, I do not see that we are providing for anything that ought not to be provided for. What is it? Simply that "no power, civil or military, shall, at any time, interfere with the free exercise of the right of suffrage."

If the free exercise of the right of suffrage is interfered with by a mob in the city of Philadelphia, the military, where the proper civil authorities are unable to sustain the rights of the people, may be called upon for the very purpose of protecting the right of suffrage. Therefore I say that this is not in violation of the right that we have already guaranteed to us in the Bill of Rights under the old Constitution; and it is only the right of suffrage that this provision declares that the

military and civil power of the country shall not interfere with.

Now why should the military or civil power of the country interfere with the free exercise of the right of suffrage? As I understand it, those gentlemen who are disposed to oppose this section do not propose to interfere with the free exercise of the right of suffrage; but they propose, if necessary, whenever the sheriff or other civil or police authority is insufficient, to call upon the *posse comitatus*, whether it be in the shape of a military organization or otherwise, in order that the free exercise of the right of suffrage may be protected in your large cities, in your rural districts, or wherever the free exercise of the right of suffrage by the people is interfered with in any way. As I understand this section, it provides for nothing more. Now, who wants the military or civil power of the country called in to interfere with the free exercise of the right of suffrage? Whoever does, let him vote against this section; whoever does not, let him vote for it.

MR. AINEY. I move to amend the amendment by striking out the word "with" and inserting the words "to prevent," so that the section will read:

"Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

THE CHAIRMAN. The question is on the amendment of the gentleman from Lehigh.

MR. DALLAS. Mr. Chairman: I rise simply for the purpose of correcting what I suppose to be a mistaken statement of fact in relation to a matter of which I happen to have some knowledge.

In the instance which has been referred to of military interference with elections, if my memory now correctly recalls the subject, the facts were simply these: There was no necessity whatever for the interference of the military in the city of Philadelphia for the protection of any honest voter. There was no riot; there was no mob; there was no threatening of either. The mayor and the police force of the city of Philadelphia supposed themselves to be, and I believe were, amply able to maintain the peace of the city during that day; but the marshal of the United States, an officer of the United States government, assumed to call upon the marines stationed at the navy yard to take possession of one of the polls of the city of Philadelphia, and we witnessed the disgraceful episode

of a military force upon election day parading through the streets of Philadelphia, with banners flaunting and bayonets fixed, to the place where the free-men of this city were entitled to go to cast their ballots without military interference; and that without any call from any civil officer of the State of Pennsylvania.

Now, sir, just referring to this instance, and to this instance alone, as my whole argument in support of my vote, I shall heartily support this addition to the Bill of Rights, for it is well, sir, that the people of Pennsylvania should have it constantly before their eyes, that the military power cannot rightfully interfere in elections.

Mr. MACCONNELL. I should like to ask the gentleman a question. Suppose we put this clause into the Constitution of Pennsylvania, will it affect the action of the United States authorities?

Mr. DALLAS. I fear it may not under all circumstances, but I would still have it in for the reason which I gave, that I would at least have the people of Pennsylvania constantly made aware through their Declaration of Rights what their rights upon the subject were.

Mr. NEWLIN. Mr. Chairman: I regret that the gentleman from Philadelphia, behind me, (Mr. Dallas,) has brought up this question by alluding to the event that took place a year or two ago—

Mr. DALLAS. The gentleman will pardon me; I did not bring up the subject. It was introduced by the gentleman from Philadelphia, to my left, (Mr. Hanna.)

Mr. NEWLIN. I regret that it is alluded to on either side. I happen to have been present on the occasion which has been referred to, and I can say that the peace was not being preserved by the city authorities, and that the citizens were not being protected in their right of suffrage, and that the military were a necessity and were brought there as such—

The CHAIRMAN. The Chair will suggest to the gentlemen to confine their arguments to the question.

Mr. NEWLIN. This matter has been brought here not by me. I desired to make this statement in answer to an allegation of fact.

Mr. BARTHOLOMEW. I desire to understand exactly what this section means. Does it say that the power of the civil or military authorities shall not be used?

Mr. MACCONNELL. I will say in answer to the question of the gentleman—

Mr. BARTHOLOMEW. Let me give my idea more fully. For instance, in some portions of the State of Pennsylvania a particular party predominates very largely. The character of the people may be rough; they take a notion into their heads sometimes that they alone have the right to cast the votes, and that the other side have no rights that they are bound to respect or regard. Now does this section propose to prevent the civil power from interfering at that election to maintain the right of the citizen in casting his ballot? Under this provision would there be no power under the acts of Assembly, for instance, that we have now, where there is apprehended danger or apprehended violence at an election, to make application to the courts for the purpose of having a force taken there so that the rights of all citizens should be maintained in that respect? Does this section prevent any such proceeding as that?

Mr. MACCONNELL. I have only to say in answer to the question that this new clause added to this section never met my approbation, and does not meet it now, and I have no objection to its being stricken out, because I do not think it is a wise provision.

Mr. CUYLER. Mr. Chairman: It never can be amiss, nor, as I suppose, out of order, when we discuss the question whether a certain provision in the Constitution is necessary, to allude to examples that may illustrate its necessity; and therefore, with profound respect to the Chair, I regret that the gentleman who sits in front of me (Mr. Newlin) should have been called to order, because I desire to say a single word upon that subject.

The CHAIRMAN. The Chair will explain. The Chair does not at all object to the introduction of a case of this character for the purpose of enforcing an argument. The Chair intended to object to a controversy about the facts of the case only.

Mr. CUYLER. I am in favor of the section precisely as it is written here, and I only hope that the people of Pennsylvania have the manliness and the courage to assert that section in its broadest width.

I witnessed the scene myself, and was one of the advisers of the mayor, Mr. Fox, and accompanied him to the ground, and accompanied him to the United States marshal's office, in the city of Philadelphia, to remonstrate on the occasion that has been alluded to; and I assert with just as much solemnity as any gentleman here may have ventured to declare

the opposite, that the civil power of the city of Philadelphia was adequate on that day to the absolute preservation of the peace of the city.

Mr. D. N. WHITE. Mr. Chairman: I rise to a question of order. If Mr. Newlin had not the right to go on in order, I do not see how his colleague has the right to go on in order.

Mr. NEWLIN. I propose to answer the gentleman if he is allowed to go on, undoubtedly, and I take it the Chair will so decide.

Mr. D. N. WHITE. I want both sides heard.

Mr. NEWLIN. If we are to have this political matter dragged into the Convention, I want it thoroughly ventilated, and I propose to answer the gentleman. My facts are not his facts.

SEVERAL DELEGATES. [To Mr Cuyler.] Go on.

Mr. NEWLIN. Let us have all or none.

The CHAIRMAN. The Chair desires to state that he intended by his remark only to restrain irrelevant debate. He had no idea at all of interfering with the progress of the debate on the section.

Mr. NEWLIN. If that is the case, I am still in order to go on with my remarks.

Mr. CUYLER. After I get through.

Mr. NEWLIN. The gentleman from Philadelphia, who sits behind me, is occupying my time. However, I yield to him.

Mr. CUYLER. I do not ask the gentleman to yield to me. I claim my rights, no favors, with the utmost respect for the gentleman. I stand here on my rights, not on the concession of my colleague from Philadelphia.

I have always supposed that the Constitution of the United States authorized the intervention of the authorities of the general government with military force when the State itself had become powerless and the Executive of the State asked that intervention; but I have never supposed that a condition of things could arise or exist in this country short of absolute revolution in which a power existed on the part of the President of the United States, and still less of any subordinate officer of the government, upon his mere motion to assume the military control of any portion of any State of the Union. I deny any such doctrine. It is wholly repugnant to American freemen or to the rights of American freemen. It is utterly in violation of the spirit of our government that any such power should exist.

Not only is it in violation of the spirit of our government, but it is in square and direct violation of the positive language of the Constitution of the United States itself. Even the Supreme Executive of the United States cannot intervene till the State confesses itself powerless and the Governor of the Commonwealth shall ask his intervention. Yet what did I witness (for I speak as an eye-witness) two years ago on the occasion alluded to? With the mayor of the city having the absolute control of the city, with a police power adequate to the preservation of the peace of the city, with the mayor of the city protesting against, not inviting, any such intervention, I saw, at the request of the marshal of the United States in this district, a file of marines from the navy yard, led by Major Forney, with fixed bayonets, go down to an election poll and exclude the police, the lawful preservers of the peace, and take possession of that poll. I saw that scene, and I went with the mayor to the marshal to remonstrate afterwards, and the mayor could only say to the marshal, "I am powerless to resist that which you do here by the direct exercise of unlawful force and power; I tell you I am able to preserve the peace of this city;" and the marshal turned a deaf ear and refused to listen to him. Thus it was that the civil power of this city was silenced under a positive assumption of unlawful power on the part of an officer of the United States.

Mr. LILLY. Will the gentleman allow himself to be interrogated at this point?

Mr. CUYLER. Certainly.

Mr. LILLY. Will all the State Constitutions that you can pile up prevent that same state of affairs? Will not the United States authorities have the same authority that they had before?

Mr. CUYLER. I believe the State Constitutions do generally contain such a provision. I deny that the United States have any such power, but I have pointed to an occasion on which they exercised it without its lawful possession.

Mr. H. W. PALMER. I desire to inquire whether the marines prevented any man from voting on that occasion?

Mr. CUYLER. I verily believe that they prevented every man from voting who differed from them in political sentiment.

Mr. HANNA. I should like to ask the gentleman whether the marines were not called out under the authority of an act of Congress?



Mr. CUYLER. I do not know what authority called them out, but they were called out in the teeth of the Constitution of the United States, which said that the President of the United States could interfere when the Governor of the Commonwealth confessed himself powerless and called for assistance. They were called out in utter disregard of every provision of law, with the State in full possession of every authority here, and abundantly able, with the authority she possessed, to preserve the public peace, but with the State violently thrust aside, and her prerogatives seized by men who were called out by the United States marshal of this district, of whom I desire to say nothing. He has passed to his account, but it is a fearful account before American freemen that an officer should exercise such an authority.

That is the reason, Mr. Chairman, why I am in favor of writing in the Bill of Rights the words, "and no power, civil or military, shall at any time interfere with the free exercise of the right of suffrage." I am for putting it there if it were only to make a protest against the very scene to which I have alluded and of which I complain. I am for putting it there even though we be powerless to assert the right it declares. My heart, as a free man, tells me that those words ought to be in the Constitution of the State, and that if we had the manliness of our fathers we would have the courage to assert them when the emergency came.

Mr. NEWLIN. Mr. Chairman: At the time the occurrence which has been spoken of took place there was a United States election going on. United States officers, to wit, members of Congress, were being elected by the people, and the authorities of the municipality displayed very obviously an intention to preserve the peace on one side only.

Now, sir, am I to be told that when there is an open riot, when there is a breach of the peace, when citizens are being struck down and are being interfered with and prevented by the municipal authorities in the exercise of their right of suffrage, we are to call upon the Governor of the State to ask the President to send troops here? Sir, let us act on the spot; let us recognize facts and not discuss theories when men are being struck down in our sight. I saw what was done. The gentleman from Philadelphia who sits behind me (Mr. Cuyler) avers that he came in afterwards, after the military

force was there to preserve order, and after they had enforced order, and should have done it, if necessary, at the point of the bayonet. I am for preserving order at all hazards; and that is what was done then. Upon that occasion the military force was far from interfering with the free exercise of the right of suffrage by the citizens of this city; it simply enforced the right of every man in turn, to come up and deposit his ballot; and they were ranged on the other side of the street from the polling booth. I saw them there myself; and I saw a breach of the peace, and more than one, before the military arrived there, and there was no police force of sufficient numbers to preserve the peace. These are the facts.

Mr. CASSIDY. Mr. Chairman: I am sorry to be compelled to trouble the committee about this matter. The gentleman who has just taken his seat has given a version of the transaction that probably he saw, and I have no doubt he did as he states the fact; but he stands in the uncomfortable position of having nobody else who saw it. Now, what occurred was pretty much as it was reported in the courts, for I happened to be concerned in the cases of the arrests that arose out of that transaction and happened to be on the ground most of the time. I do not think it is very important in the consideration of the question now before the committee; but as it is a matter involving the truth of history, we had better understand exactly what occurred.

The police were in charge of that neighborhood and of that locality. If there was any breach of the peace, why was it that, although the friends of the gentleman who has just taken his seat were in authority so far as the administration of public justice in this county is concerned, no one was ever tried, prosecuted or convicted for any offence committed at that poll or in that neighborhood? Those who were arrested were tried, heard, and discharged by the present President Judge of this county. I appeared I believe for all of them, certainly for nine-tenths of them.

The political effect of that transaction was a little remarkable. It was a locality where the colored voters of this city were largely in the majority. I have examined the hourly returns, and up to the time of the arrival of the military force at that poll, the Republican vote was twenty-five per cent. ahead of the Democratic vote. From the very moment that the military

came there and took charge of the poll, the Democratic vote went up twenty-five per cent.; and the Democrats carried the precinct. That is the fact as recorded in the returns made to the office of the prothonotary of this county.

Mr. NEWLIN. Then you ought not to object to it.

Mr. CASSIDY. No; I am not objecting to it. So that if there is anything at all in the course pursued by the gentleman who has just taken his seat, he ought to pray for no such interference. These are the facts just as they can unquestionably be shown by the reports as filed in the proper office in the shape of figures, which somebody has said never lie; but I believe we have established that that is a mistake in this country. [Laughter.] The facts, however, are just as I have stated them.

But the important matter for our consideration is, after we have had this matter ventilated, to come back to the section as it has been presented to us. Can there be any doubt about how it can be fairly interpreted? Can it be subject to any interpretation but the one that would be put upon it by any court, and that perhaps would be without adding these last words to it, namely, that there shall be no interference by civil or military authority with the exercise of the right of voting. If the military were brought there improperly, would not the court at once interpose? If they were there to interfere with the right of suffrage, of course they would be grossly violating the law, and it would all be subject to a remedy afterwards; because I take it for granted that these people would no more go there to interfere, being responsible to our proper authorities for improper interference, than they would do any other illegal act.

The fair interpretation of the section as it is presented is that the civil or military authorities shall not interfere with the exercise of that right which we are all in the habit of considering one of the dearest we can be called upon to exercise. So that beyond the fact that we have perhaps had a chance of ventilating some little feeling about a matter that is two or three years old, I do not see the importance of having this addition to this section urged in any way. Coming back to consider it as persons desiring to put in the fundamental law a reasonable and proper section, it seems to me it is not open to any animadversion at all.

The CHAIRMAN. The question is on the amendment offered by the gentleman

from Lehigh, (Mr. Ainey,) to strike out the word "with," in the second line, and to insert the words "to prevent," so as to make the section read: "That the elections shall be free and equal, and no power, civil or military, shall, at any time, interfere to prevent the free exercise of the right of suffrage."

Mr. MANN. I understand that the gentleman from Chester (Mr. Darlington) moved to strike out all after the word "equal," and I submit that the amendment of the gentleman from Lehigh is not now in order.

The CHAIRMAN. No amendment was submitted by the gentleman from Chester.

Mr. MANN. Then I make that motion now, to strike out the amendment and all of the section after the word "equal," so as to make it read: "Elections shall be free and equal," leaving it precisely as the section now stands in the Bill of Rights.

The CHAIRMAN. The question is on the amendment to the amendment.

The amendment to the amendment was rejected, there being, on a division: Ayes, thirty-six; noes, thirty-eight.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Lehigh (Mr. Ainey.)

The amendment was agreed to, there being, on a division: Ayes, thirty-four; noes, thirty.

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

The section was agreed to.

The CLERK read the next section as follows:

SECTION 6. That trial by jury shall be as heretofore, and the right thereof remain inviolate.

Mr. DE FRANCE. I offer the following amendment, to be added at the end of the section: "For all crimes and misdemeanors now existing or hereafter to be created punishable by sixty days imprisonment."

I do not know that this amendment is very well drawn; I have drawn it up hastily at my desk; but it seems to me that we ought to make some addition to this clause as to trial by jury. As I understand, the Supreme Court have several times decided that for all crimes created by act of Assembly since the year 1776 there need not be a trial by jury at all; that the trial by jury might be dispensed with. I will not undertake to cite those authorities; I have given them to

the committee; but they take the broad ground that for any crime created by statute since 1776 trial by jury is not a necessity. I desire to have some rule adopted whereby any person charged with an offence that is punishable by imprisonment for a definite time—I do not care whether you make it ninety or sixty days—shall have the right to have a trial by jury. At first the decisions only went so far as police regulations, but the decisions lately have applied the same doctrine to all crimes created since the adoption of the Bill of Rights in the Constitution of 1776.

Mr. DARLINGTON. Do I understand the gentlemen to propose to have a jury trial in all cases of summary convictions?

Mr. DE FRANCE. In all cases where the punishment is imprisonment for a certain length of time.

Mr. DARLINGTON. That is, all summary convictions.

Mr. DE FRANCE. Take the case of what we are in the habit of calling the iron-clad liquor law in Mercer county. I do not say anything about the law; it may be a good law; but a person charged with the violation of that law is tried by six men, and he can be imprisoned for ninety days on that trial by six men, gathered up in the county, perhaps not of the very best quality. We have an excellent judge in that district. His name is John Trunkey. He has reviewed all the authorities on this subject, and he has come to the conclusion that for all offences, no matter what the crime may be, created by statute since 1776, a jury trial may be dispensed with entirely. Now I want something put in the Constitution, if the committee should agree with me, limiting it in some way. I take it that the business of this Convention is to protect the rights and liberties, particularly the liberties, of the citizens of this Commonwealth.

I submit the amendment without further remark.

Mr. MACCONNELL. It will be observed by the committee that this section as reported by the Committee on the Declaration of Rights is precisely the section in the old Constitution. In committee I thought that it ought to be changed, and I think so still. I thought so for the reason given by the gentleman from Mercer. The Supreme Court has decided, as he has said, that in criminal cases under the provisions of our Constitution, no person is constitutionally entitled to trial by jury

in the case of any crime specified by statute since 1776; and the gentleman's amendment would tend to cure that. But the difficulty is, that they have decided also that the same rule applies in civil cases. For instance, in the case of an act authorizing a railroad and allowing the company to take the private property of individuals for the use of the road, they have decided that the Constitution does not guarantee to the owner of the property or to the railroad claiming to take it, the right to have the matter decided by a jury, because no such case existed prior to 1776 and consequently the right would not apply. I had intended to offer an amendment as a substitute for the section which I will read:

"All persons shall be entitled to trial by jury in all cases affecting their persons, lives, liberty, property or reputation; but this provision shall not be construed to apply to surety of the peace cases, or to change the practice in chancery cases."

That would provide for civil cases as well as criminal cases, to which the amendment of the gentleman from Mercer refers. I do not know whether the proposition that I suggest is such a one as would meet the approbation of the committee. It is pretty hard to draw up anything that will meet the exigencies of the case. This is the one that I drew up and I am content to offer it.

The CHAIRMAN. Does the gentleman offer the amendment?

Mr. MACCONNELL. If it is in order to offer it as an amendment to the amendment I will do so.

The CHAIRMAN. That will depend on the form in which it is presented.

Mr. MACCONNELL. I propose it as a substitute for the section.

The CHAIRMAN. The gentleman from Allegheny proposes to strike out the section together with the amendment and insert what will be read.

The CLERK read as follows:

"All persons shall be entitled to trial by jury in all cases affecting their persons, lives, liberty, property or reputation; but this provision shall not be construed to apply to surety of the peace cases, or to change the practice in chancery cases."

Mr. DODD. Is an amendment to that amendment in order?

The CHAIRMAN. No; this is an amendment to an amendment. The question is on the amendment to the amendment, offered by the delegate from Allegheny.

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Mercer.

Mr. NEWLIN. Now, if it is in order, I move to amend the amendment by substituting for it :

"That the right of trial by jury shall be inviolate; but may be waived by the parties in all civil proceedings, and the cause shall be determined by the court in the manner prescribed by law. In civil proceedings three-fourths of the jury may find a verdict after such length of deliberation as the Legislature may require."

Mr. Chairman, inasmuch as I have already addressed the House on a former occasion on this question, I do not propose to trespass on their attention.

Mr. HARRY WHITE. I do not want to interfere with the delegate, but I want to raise a point of order. This proposition having been before the committee of the whole and voted down, cannot be renewed at this time.

Mr. NEWLIN. It is not exactly in the same shape.

The CHAIRMAN. It has not been presented to this committee of the whole before.

Mr. HARRY WHITE. If the Chair has doubt about it, I withdraw the point.

Mr. NEWLIN. I was about to say that I do not propose to take up the time of the committee on this subject. I simply desire now to call the attention of the committee to the objection urged by the gentleman from Mercer as to the present state of the law on this subject, which is : that jury trial is not even in criminal cases assured for matters arising under statutes passed since 1776, and a man may be tried for a statutory offence created subsequent to that time, without the right of trial by jury. That is provided for here by the general phraseology that "the right of trial by jury shall be inviolate," not "as heretofore," but generally shall be inviolate. On the other proposition I do not propose to address the House for the reason I have stated.

Mr. DODD. Mr. Chairman : I object to the requirement of unanimity in jury trials in civil cases, because it is contrary to reason; because it compels jurors to commit perjury, and because it tends to defeat justice.

The origin of unanimous verdicts in jury trials, like that of the system itself, can only be conjectured. Perhaps trial

by jury, strictly speaking, was unknown to the ancients, except in England, and there is no well authenticated instance of a jury trial, such as exists in modern times, even in England, prior to 1290. But among the Anglo-Saxon, among the Teutonic and Scandinavian nations, probably among the Normans, and in Greece and Rome, there existed an institution somewhat similar to our trial by jury, and from which it is supposed to have derived its origin. But in none of these bodies was unanimity required. Nor was it required in the famous *judicium parium*, or judgment of peers, which phrase since the time of *Magna Charta* has been so dear to every Anglo-Saxon heart. But the judgment of peers was not trial by jury, nor, perhaps, even the original of trial by jury. Had it been, the absurdity of requiring a unanimous verdict would never have been engrafted on the system.

By the Anglo-Saxons twelve men were required as witnesses of every important transaction, and the evidence of the twelve was conclusive of the facts in the case. In the time of Henry II we find that although the custom of calling twelve men as witnesses of each transaction had ceased, yet in all controversies twelve men were called from the neighborhood because they might or did know the facts in the case, but they could also take the testimony of other witnesses, and from their own knowledge and the evidence given decide the case. From the fact that these men were witnesses and decided from their own knowledge of the facts, probably arose the requirement of unanimity. But even then this was not strictly required, for while twelve witnesses must decide the case, if the first twelve could not others were added to the number until twelve were found who could decide, and the obstinate minority were punished with a fine. Why the particular number twelve was fixed upon is not known, but had probably no better reason than that given by an old author, that "the prophets were twelve to foretell the truth; the apostles were twelve to preach the truth; the discoverers twelve sent into Canaan to seek and report the truth; and the stones twelve that the heavenly Jerusalem is built upon."

But whatever the origin of the requirement of a unanimous verdict of twelve men, the necessity of unanimity gave our legal ancestors much trouble. One of the most difficult duties of the judges was

*compellere ad concordiam* as it was termed—to compel the jury to agree. This was done by severe fines and punishments inflicted on the disagreeing minority; by deprivation of food and light; by carrying them around in a cart from town to town; by indignities, suffering and starvation. Whatever reason there might have been in forcing twelve unanimously to agree when all were supposed to be personally acquainted with the facts in the case, I respectfully submit that now when a juror is not allowed to sit in a case if he knows anything about it, and in certain cases is not allowed to sit if he knows anything at all, the reason has ceased, and the law itself should cease with it.

By what reason can the requirement of a unanimous verdict in civil cases be supported? It may be in criminal cases on the ground that no man should be convicted where one of twelve jurors has a reasonable doubt of his guilt. But no such reasoning applies in civil cases where jurors simply settle questions of account or title between man and man. In no other tribunal is unanimity required. The judges of our Supreme Court, who are in some cases judges of fact as well as law, and who may sometimes set aside the most solemn acts of the Legislative and Executive departments, need not be unanimous. The Legislature which controls the affairs of this Commonwealth; Congress which enacts laws affecting the destinies of the Union; this Convention which forms the organic law for the people of the State; the people themselves, in adopting or rejecting the laws framed by us, act by majorities; why, then, may not the majority of a jury determine a question of civil right between man and man? Can a single reason be given why majorities should rule in one case and not in the other? Is unanimity required in jury trials in order that due deliberation may be secured? Deliberation is just as necessary, far more necessary in fact, in legislative bodies. There is no reason for requiring unanimity. It is a mere accident engrafted upon the system of trial by jury. Its tendency is for evil and not for good. It stands to-day like an old ruin which in its inception was useless and cumbersome, which time may have rendered sacred, but at the same time has rendered threatening and dangerous, filled with noxious vapors and treacherous pitfalls, where the poisonous viper lurks and the unclean bat builds its nest.

Not only is the requirement of unanimity unreasonable, but unanimity is purchased by the sacrifice of truth and conscience. The juror of to-day is not a witness personally acquainted with the facts of the case. He is ignorant of the matter in issue except as it is brought before him by the testimony of witnesses. He is sworn that he will a true verdict find according to the evidence. The evidence may be conflicting. The pleadings of counsel are calculated to make the determination of a doubtful case more difficult. Jurors must, in most cases, conscientiously differ. Interchange of views generally results in each man being more fixed in his opinion. What is the result? The jury must stay out until, famished and sick, they are discharged by the court, and then the whole case, at great trouble and expense, is to be again tried, or else the minority must deliberately and willfully sacrifice their conscience and consent to a verdict which they believe is not a true verdict according to the evidence. Think of it a moment. The man who from any cause joins in a verdict which is opposed to his own views, violates his solemn oath, and stains his soul with the guilt of perjury. And yet for centuries juries have been compelled to this crime by the courts. *Compellere ad concordiam* was the quaint language of the ancient law. They were compelled to concord by punishments, by fines, by imprisonments, by degradation, by infamy, by thirst, by starvation. We are a little more merciful now, but I have seen jurors kept out all day and all night with nothing to eat, no bed to sleep upon, and come into court pale, haggard and sick, to return a unanimous verdict purchased by the deliberate perjury of a minority of their number, who had thus been compelled to agree. "How," asks an old author, "may the law stand with conscience that will drive an innocent man to that extremity to be either forsworn or to be famished and die for want of meat?" And the question is just as pertinent to-day, for confinement and absence from his family and business is as great a punishment to the juror of to-day as the want of food and drink to the juror of five centuries ago. The minority are forced at length to yield to the majority, if there is a verdict at all. Why not, then, permit the majority to return a verdict at once, without forcing the minority to perjure themselves to obtain it? If this is not a relic of barbarism where shall

we look for one. If we cannot abolish it, but must still cherish the fraud on account of its antiquity, let us be consistent, and restore the whole system of trial by jury to its pristine splendor. Let us restore the fines, the imprisonment, and the court which the ruthless hand of time has robbed us of. Let us have, too, the jury of attain, by which, on a new trial, if a jury of twenty-four disagreed with the former jury of twelve, the latter were declared infamous, their lands and chattels forfeited, their wives and children turned out of their homes, their houses thrown down, their trees uprooted and their meadows ploughed. This was part of the ancient system of trial by jury. If we are to be governed by reason in this matter let us make the system what the enlightened reason of this age demands it should be. But if we are to be governed by veneration for that which is ancient, let us restore the system to its ancient condition.

The necessity of unanimous verdicts defeats the ends of justice. We have talked here of corruption in our legislative halls and among the people. Corruption is not confined to any locality or position. Like the malaria of the marshes, it poisons the air and creeps into all places and pollutes all men who are not by a pure conscience and a strong will lifted above its low plane. It gets into courts as well as into legislative halls. It gets into the jury box as well as into committee rooms. But no where else has it a fractional part of the power it has in the jury box. There is no other tribunal which sets in secret and gives no reasons for its decisions. In all other bodies a majority must be corrupted. In this it is necessary to corrupt but one man. One corrupt juror may, in every instance, prevent a verdict. Will any one give me a reason why the perverseness or knavery of a single juror should be allowed to invalidate the verdict which eleven others are agreed to give? Does not every lawyer in this Convention know that jurors are corrupted? Is not every man here acquainted with at least one knavish lawyer who is noted for fixing up jurors in the interests of his clients? The wonder is not that this is done, but that with such opportunities for success it is done so little. It is said there are thirty-three honest men in this Convention, and one hundred lawyers. I wish to say to the thirty-three honest men that considering the temptations which beset lawyers, and the

opportunities for successful fraud placed in their way, they are miracles of honesty, and each one, no matter how knavish he may be, may exclaim with Lord Clive when he pictured the piles of gold and jewels thrown open to him in the temples of India, and of which he stole so little—"By God, sir, at this moment I stand astonished at my own moderation."

Is it any wonder the idea of trial by jury in civil cases is losing its sacredness in the eyes of the people, when one rogue or one fool on the jury has power to prevent if not to make a verdict? Is it surprising that it has been, to a great extent, abolished in many States, and finds advocates on this floor for its virtual abolition? We must either free it from this body of death or the whole system is doomed to perish.

It is no modern notion that trial by jury would be more perfect by permitting a majority to find a verdict. In most countries which have borrowed the system from England, the absurdity of unanimity has not been adopted. In Scotland the majority of the jury may return a verdict in criminal cases, although, by some strange perversion, unanimity is required in civil cases. On the continent of Europe, trial by jury in civil cases is unknown, but in France and Prussia a majority may find a verdict in criminal cases. In Portugal two-thirds are required. In Australia a majority may find a verdict.

So long ago as 1830 an English commission, consisting of some of the greatest lawyers of the day, recommended that three-fourths of the jury find a verdict in civil cases, and reported that "the interests of justice seem manifestly to require a change of law upon this subject." Later Lord Chancellor Campbell introduced a bill into Parliament to the same effect. England will, sooner or later, introduce this reform. I hope Pennsylvania will do itself the honor of anticipating England in this good work.

There have been for years past doubts as to the wisdom of this requirement. Our best authors on government have written against it, including Locke, Bentham and Leibner. Those of you who studied Christian's Blackstone will remember that learned editor's opinion that "the unanimity of twelve men so repugnant to all experience of human conduct, passions and understandings, could hardly, in any age, have been introduced into practice by a deliberate act of the Legislature." Hal-

lam speaks of it as "that preposterous relic of barbarism, the requirement of unanimity." And Forsyth, in his excellent work on trial by jury, considers it "opposed to both justice and expediency."

How happens it, then, that a system like this, so plainly opposed to reason, to conscience and to justice, is still allowed to exist? Simply because it is protected by established system, sacred custom, ancient usage, venerated habits of our ancestors, fear of innovation, and other guards of a like nature, before whose valor reason, on many a hard fought field, has retired in defeat. These are all well enough if supported by reason, but otherwise are venerated frauds. Yet they are powerful enough at times to turn the spear of Ithiel. Let us be governed by reason in this matter. Do not let us sit here crying, as Sidney Smith charged upon the Parliament of England, "Ancesters, ancestors, *hodie non*, Saxons, Danes, save us. Fiddlefig, help us. Howell, Ethelwolf, protect us." Our ancestors who invented unanimity in jury trials were young and inexperienced. We are eight or ten centuries older and ought to be able to improve upon their work. They were little better than barbarians, living in squallor and filth. They had not a clean shirt to their backs, a bed to lie upon, a decent roof to cover them, a chimney to carry off their smoke nor a window to look through. To say nothing of railroads, steamboats and telegraphs, if they had even fine tooth combs they never used them. Not one in a thousand could read; although to spell saloon with a hess and a hay and a hell and two hoes and a hen would have saved them from the hanging which many of them richly deserved. And must we preserve unanimity in jury trial because they invented it? I hope not. Let us be guided by the wisdom of the nineteenth century rather than by the mistakes of the ninth.

Mr. GIBSON. I do not wish, Mr. Chairman, to detain the committee for any length of time. When this same question was up the other day, I took occasion to make a few remarks upon it, and I rise now simply to maintain the position taken by the committee, who have reported this section of the Bill of Rights, on the ground that the institution of trial by jury cannot be preserved at all except it be by preserving the unanimous verdict along with it. As I understand the argument of the gentleman from Venango (Mr. Dodd) it is an argument against

trial by jury. Why have twelve men to render a verdict, any more than three men or six men? It is because a jury, according to the ancient institution, consists of twelve men; and trial by jury means a unanimous verdict of the twelve men who are empannelled to try the case. If gentlemen attack the jury system, that is one question which this Convention may consider, not by saying that the right of trial by jury shall be inviolate, and so many may render a verdict, but the amendment ought to read "trial by jury is hereby abolished, and the legislative power of the Commonwealth may provide such means for trying cases as it may determine."

The argument that has been used by the gentleman from Venango and others, founded upon the ancient system of forcing jurors, has nothing to do with trial by jury as it at present exists. Jurors are not now forced to render their verdicts. Jurors now are treated very like any other class of men who have matters submitted to their decision. They are furnished with provisions; they are made comfortable during their deliberations, although they may be kept from their homes for a time on account of their disagreement, and as the law still requires them to be unanimous in their verdict; but it is not forced from them, for after a reasonable time they may be discharged.

This amendment proposes that three-fourths of the jury may render a verdict. I understand the gentleman from Venango to contend that a majority may render a verdict. What would the result be? Immediately after a case had been ended, the jurors would go to their room and cast a ballot, and seven men voting to find for the plaintiff, they would come into court and that verdict be received. What time has there been for consultation? What time has there been for the interchange of opinion? What time has there been to understand the case?

It may be said in answer to this, that the verdict of a majority or of any less number than the whole, is only to be taken after the jury have been in consultation for some considerable time, such time as would entitle them to a discharge, and that then a majority may render a verdict. But, sir, the objection is answered by the simple fact that the number of men who may agree upon a verdict, if they were compelled to do so, would just hold out until the time had elapsed, and then come into court and render the

verdict. It would give an opportunity for electioneering and for enabling a bare majority to hold out. But sir, that is not trial by jury; and if three-fourths or two-thirds are to render the verdict, still you have to get the last man to make up the requisite two-thirds or three-fourths, if you require three-fourths, and nine men can render a verdict; when you have eight you must get the ninth man somehow, and why is that not as objectionable as getting the eleventh or twelfth man?

I say then the amendment as proposed does not remedy the evil in any particular. I was very much struck the other day with the remark that was made by the distinguished gentleman from Philadelphia (Mr. Cuyler,) when he said that trial by jury enabled the people to take part in judicial proceedings. The institution of trial by jury has become so deeply imbedded in our institutions and in the affections and regard of the people, as I believe, that you might as well attempt to abolish the Legislature; you might as well attempt to abolish any other of the recognized institutions which belong to democratic and republican government.

The people of the country take a part in judicial proceedings through juries which no other system could enable them to do. The judge, as a judicial officer, is removed from the people. The lawyers and the court together, by their artificial system of reasoning, rise above the popular comprehension when they discuss a case according to the points of law that are involved in it; but when a jury is called from among the people, the judge is obliged to come down to the popular apprehension when he charges the jury in regard to the facts and the law of the case. All lawyers know well that when, after the discussion of a point of law involved in a case, the judge is about to charge the jury, there is an attention paid to him which you will find under no other circumstances. The whole of those twelve men turn with eager interest to hear the words that fall from his lips, and no matter how much a judge may dislike the labor that may be imposed upon him in the decision of causes, there is no judge who takes pride in his profession and in the position that he holds, who does not delight in instructing the jury upon the law and the facts of the case in what is called his general charge; and if it is an interesting case we find the whole popular mind excited by it; we find the people elevated; we find them enabled to

understand the questions that are in dispute, the questions of law that are involved, and they feel a deep interest even in the most trivial case that is being tried.

The institution, therefore, is one that belongs to our institutions; it is no longer the institution that it was when it originated in England; it is not even the same institution that it is in England now, because it is more a popular institution with us than it is with them. The courts at Westminster, in England, or the courts of *vis prius* are so few, and so small, a number of people are called to participate in the proceedings, that the popular apprehension may not be such as to entirely participate in the legal questions that may arise; but with us in this country, where in every county in the Commonwealth, for several weeks in the year, a panel of jurymen is called, and cases are submitted to them, the people become as much interested as the lawyers in the cases that are being tried. When the judge comes to the county seat and opens his court, and when the jurors are gathered together there, and when they are called one after another into the jury box, there is a popular interest in judicial proceedings which can arise from no other source. The people, therefore, become acquainted with our law; the people become acquainted with what it is that is being tried, and they are satisfied with the result of the verdict and the judgment upon it, because they know it is done, as they suppose, according to law.

I do not think that such satisfaction would exist if decisions were rendered by courts alone. I do not think that such satisfaction with the judgments that are rendered would exist if it were not as I say, that the people take part themselves in the proceedings, and because they know that the verdict or judgment that has been rendered has been by the unanimous consent of those empanelled to try the case.

But, sir, I do not wish to detain the committee any longer. I merely desired to express this much on the part of the Committee on the Bill of Rights, to show that they are in earnest when they submit this proposition unamended, and because they believe it to be one of the institutions of this country that should not be tampered with. The arguments that have been submitted are arguments against the right of trial by jury itself. If the right of trial by jury is to remain inviolate,



then the unanimous verdict must be retained as a part of it.

Mr. NEWLIN. I call for a division of the question so that we may vote first on the first sentence.

The CHAIRMAN. The Chair decides that the question being on an amendment to an amendment, it is not divisible.

SEVERAL DELEGATES. Let the words proposed to be inserted be read.

The CLERK read as follows:

"That the right of trial by jury shall be inviolate, but may be waived by the parties in all civil proceedings, and the cause shall be determined by the court in the manner prescribed by law. In civil proceedings three-fourths of a jury may find a verdict after such length of deliberation as the Legislature may prescribe."

Mr. BROOMALL. Do I understand the Chair to decide that that is not divisible?

The CHAIRMAN. It is an amendment to an amendment.

Mr. KAINE. That embraces the report of the committee, does it not?

Mr. DALLAS. I want to vote for half of this proposition, but against the other half.

The CHAIRMAN. Inasmuch as it seems to be desired, though it is not according to rule, the Chair is inclined to allow a division. He would, however, venture to suggest that great confusion would grow out of the adoption of one part of the substitute and the rejection of the other, and the Chair thinks the proper way would be to treat the proposition as an amendment to the amendment.

Mr. NEWLIN. Then I withdraw the last sentence of my proposition and simply propose to amend the pending amendment by substituting:

"That the right of trial by jury shall be inviolate, but may be waived by the party in all civil proceedings, and the cause shall be determined by the court in the manner prescribed by law."

The CHAIRMAN. The amendment to the amendment will be so modified.

Mr. J. W. F. WHITE. I shall vote against the amendment now pending, and shall propose afterwards, if it be rejected, to add these words to the section as reported by the committee:

"But the Legislature may authorize the courts in civil cases to receive the verdict of less than twelve, where the whole number cannot agree."

I cannot offer that as an amendment now, but for the reasons which I gave the other day I am opposed to fixing in

the Constitution the number that shall render a verdict. I prefer that that matter shall be left to the Legislature or to the courts.

Mr. NEWLIN. That part of my amendment is withdrawn, and is not now before the committee. It is only the simple question of the waiver of a jury trial in civil cases that is now pending.

Mr. J. W. F. WHITE. I know; but I was going to add that I prefer the section as reported by the committee or the section in our present Constitution, simply adding to it the words which I have indicated. For that reason I shall feel constrained to vote against this amendment.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia (Mr. Newlin) to the amendment of the gentleman from Mercer (Mr. De France.)

The question being put, a division was called for and the ayes were thirty.

The CHAIRMAN. There is not a majority of a quorum voting in favor of the amendment to the amendment, and it therefore falls.

Mr. NEWLIN. I ask for a count of the House. There is a quorum in the committee rooms, and we had better have them here to vote.

Mr. BUCKALEW. A large number of members are in the side rooms not expecting that the vote would be taken so soon. I would like to have the proposition read again.

The CHAIRMAN. The amendment will be read.

The CLERK read the amendment of Mr. Newlin.

Mr. BUCKALEW. I understand that the Chair has not announced the result on that proposition.

Mr. HARRY WHITE. I thought the result was announced.

The CHAIRMAN. The Chair announced that there was not a majority of a quorum in the affirmative and therefore the proposition fell. The question now recurs on the amendment of the gentleman from Mercer, (Mr. De France,) which will be read.

The CLERK. The amendment is to add to the section as amended the words, "for all crimes and misdemeanors now existing or hereafter to be created, punishable by sixty days' imprisonment."

The amendment was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. J. W. F. WHITE. I now move to amend the section by adding to it these words: "But the Legislature may, by general law, authorize the courts in civil cases to receive the verdict of less than twelve when the whole number cannot agree."

I ask, Mr. Chairman, the indulgence of the committee while I detain them perhaps longer than the time limited by the rule with an argument in favor of the amendment I have just presented.

In the laws prepared for his colony, by William Penn, before he left England, in 1682, the eighth section secured the right to every person accused of a crime of a trial by jury of twelve peers or equals, and in capital cases a preliminary investigation by a grand inquest of twenty-four. That continued to be the law of Pennsylvania from the foundation of the colony until after the declaration of independence. Jury trials were also had in civil cases, but the right was not secured in the charter or fundamental law of the colony.

In the Constitution adopted September 28, 1776, chapter XI provided: "That in controversies respecting property, and in suits between man and man, the parties have a right to a trial by jury, which ought to be held sacred."

The sixth section of Art. IX of the Constitution of 1790 was in these words: "The trial by jury shall be as heretofore, and the right thereof remain inviolate."

The Constitution of 1776 merely secured the right of a trial by jury in civil cases, without fixing absolutely the form of the trial. The Constitution of 1790 fixed and petrified the forms and peculiarities of the trial by jury in both civil and criminal cases, and made them unchangeable. The Convention of 1837 made no change in Art. IX, and our Committee on the Bill of Rights have reported this section in the exact words of the Constitution of 1790.

It is very doubtful whether the Convention of 1790 intended to prohibit all change or improvement whatever in the then existing forms and peculiarities of trial by jury. Most likely they intended to express the same thought, but in more condensed language, as in the Constitution of 1776. But the courts have construed this language strictly as prohibiting all change, and while it remains in our Constitution jury trials must continue with all the peculiar forms and features existing prior to 1790.

Shall we continue wedded indissolubly to all these old forms and peculiarities? Shall we not open the door to such improvements as may be rendered necessary by the progress of society and the advancement of jurisprudence?

We do not seek to abolish trial by jury. It is the pride and glory of English jurisprudence. Neither would we change its essential character or impair its efficiency. We seek rather to make it more permanent, more efficient and better adapted to the intelligence of the age and the altered circumstances of society. There has been a wonderful change in the theory of government, in the constitution of society, and in the business affairs of life, in the last century. What was necessary and proper a hundred years ago may be useless now and may be an evil hereafter.

It is not proposed to interfere with the trial by jury in criminal cases, nor to place in the Constitution any change in civil cases. The proposition is only to give the Legislature power to make a change in one particular, if public opinion should demand it, namely: To authorize the courts in civil cases to receive the verdict of less than twelve, when the whole jury cannot agree.

At present the courts have no power to receive the verdict of less than twelve. If the first jury cannot agree, they must be discharged; and so with the second, third, or any subsequent jury. Is that a just or reasonable rule? Is it fair to either plaintiff or defendant? When a jury has heard all the testimony of the parties, the arguments of their counsel and the charge of the court, if they cannot unanimously agree upon a verdict, why not permit them to render a verdict indicating their individual opinions for the information and further action of the court rather than discharge them, and subject the parties to the vexation, delay and expense of a continuance and another trial?

A glance at the state of society when jury trials were instituted, and the circumstances which led to the adoption of the rule of unanimity, will show the absurdity of continuing the rule.

Jury trials were instituted in the barbarous ages of English history, when men were semi-savages, before the birth of modern civilization, and when commerce and manufactures were almost unknown. A jury of his peers was the great protection of an Englishman against the tyranny and rapacity of his sovereign. There were few matters of litigation be-

tween the subjects except in reference to the possession of land. At first the jury were relatives or neighbors of the parties, and were called as witnesses to testify from their own knowledge to the former occupants or rightful owners of the land, or the character of the parties. The law required twelve such witnesses. If the jurors first summoned could not all testify from their own knowledge, the party might call others until he had produced twelve who could thus testify. In the course of time the jury came to hear the testimony of other witnesses and gave their verdict upon such evidence. In the first stages of the jury in this modified character, the verdict of less than twelve was received. It was not until the reign of Edward III that it was definitely decided that twelve must unite in a verdict. But even then, for some time, it was allowed to add others, if the twelve first impanelled could not agree. Finally, after it was forbidden to increase the number, the judge carried the jury with him until they had agreed, or compelled unanimity by fining and imprisoning those who refused to agree with the majority.

In those early trials there was, generally, a single, plain and simple question of fact submitted to the jury, the guilt or innocence of the defendant; or in civil cases, was the plaintiff the rightful heir of the former owner of the land? How widely different the issues now submitted to juries! But in our State it is even more so than in England; for here we throw into the jury-box the most intricate and complicated affairs of business life, which there are settled in a court of chancery, without the intervention of a jury.

The requirement of unanimity in the verdict was, perhaps, a wise rule in the age when it was established. It was in the days when judges were appointed and removed at the whim of the king, and were the willing instruments of his hate and cruelty. It was a necessary abutment to the great bulwark of English liberty. It is cherished in the memories of Englishmen by being intimately connected with their heroic struggles against the tyranny of their monarchs. It is no wonder, therefore, that they cling with tenacity to every feature of the old trial by jury. But many of the best minds in England and on the Continent have pronounced against the requirement of unanimity, and more than one Commission of Parliament has urged its abolition. The great

historian, Hallam, styles it "the preposterous relic of barbarism." Shall we, in this country, where the judges come from the people and are chosen by them; shall we, in this enlightened age, retain that "relic of barbarism?"

Examine the question abstractly, apart from its origin and traditions.

*First.* The requirement of unanimity is *unreasonable*.

Twelve men are impanelled to settle a controversy between two citizens. They are strangers to the parties, and strangers to each other; chosen by lottery from a populous county, and with no regard to their fitness to try the particular case. They are packed solid in the jury box, expected to sit like statues while lawyers examine witnesses and wrangle over questions of evidence and points of law; denied the privilege of taking notes of the testimony, and incapable of understanding the drift or meaning of the wrangle among the lawyers; compelled to sit erect and silent while the counsel of each party repeats, explains and mystifies the evidence, and labors earnestly to make them take diametrically opposite views of the case; and after several days, perhaps a week or two, thus occupied in the trial, they are expected and required to come to a unanimous conclusion! No matter how complicated the circumstances of the case; how contradictory the testimony of the witnesses; however shrouded in doubt and uncertainty the truth may be; yet they must be unanimous or give no verdict!

Would any two good business men *voluntarily* submit any matter of importance, on which they honestly differed, to the arbitrament and decision of such a tribunal? It has no parallel in the whole range of jurisprudence. From the referees before a county squire, up through all kinds of arbitration, in all legislative and municipal bodies, up through all the courts of the land to the Supreme Court of the United States, the majority, or some number less than the whole, is sufficient for all purposes to decide the most momentous questions. Yet this anomaly is retained in the petit jury; and by some this "relic of barbarism" is venerated and cherished and held as sacred as the law that was given amidst the smoke and thunders of Sinai.

*Second.* It does violence to the oath and conscience of jurors.

The jurors are sworn that they "will well and truly try, and a true verdict

give, according to the evidence, so help them God!" Each juror is bound by his oath to render a verdict according to the honest convictions of his own judgment. Yet in many cases this oath is disregarded, and it must be disregarded or no verdict be rendered. In very few cases are the jurors of one mind when they retire to consider their verdict. If they have not been convinced during the trial by the testimony and the arguments of counsel, it is vain to hope they will be convinced by the arguments among themselves. In a few cases, perhaps, this may be done, where some of the jury are intelligent and discerning and others ignorant and stupid. But in the great majority of cases where there is a difference of opinion on the first ballot, a verdict can only be secured by a compromise; a compromise of their honest convictions, their consciences and their oaths. They are shut up in an uncomfortable room, away from their homes and their business, deprived of rest or proper nourishment. They cannot be relieved, cannot even be discharged, till they all agree. The weak and feeble are wearied out by the strong and determined; the true and sincere yield to the reckless and unscrupulous. And very often the best men consent to an unjust verdict, rather than subject the parties to further vexation and costs and the hazard of another jury.

*Third. It gives an undue advantage to the defendant.*

In criminal cases the accused is presumed to be innocent till proved guilty. But in civil cases there is no presumption in favor of the defendant. True, the plaintiff must make out his case. But that is often done by producing the papers on which suit is brought. In all the various matters allowed under the pleas of payment and set-off, the burden of the proof is on the defendant. Very frequently the defendant's plea impeaches the honesty, or the moral character, of the plaintiff. Take, for instance, an action on a deed, note or other instrument of writing, where the defense is forgery. The plaintiff may satisfy eleven of the jury that the paper is genuine, yet one juror may prevent a verdict and leave the plaintiff's character under a cloud of suspicion. Take also an action of libel or slander. One juror may screen the libeller from just punishment and almost certainly fix a gross calumny upon an injured plaintiff. So also in the numerous cases of unliquidated damages. One ignorant, pre-

judiced or stubborn juror may compel a compromise that does great injustice to the plaintiff.

In criminal cases there is some reason for requiring the jury to be unanimous. The theory of the law is that where there is a reasonable doubt of his guilt the accused should be acquitted. If one of the twelve conscientiously believes him innocent, perhaps there is a reasonable doubt of his guilt. But that is not the rule in civil cases. The jury must weigh the evidence and find according to the preponderance of evidence. Why, then, should the judgment of one countervail the judgment of the other eleven?

*Fourth. It invites to fraud and corruption.*

The party who wishes to prevent a verdict against him has only to secure one fast friend on the jury and his end is accomplished. The opportunity for doing so, and the ease with which it can be done, present an irresistible temptation to a corrupt man. For days previous to the trial he is mingling with the jurors and conversing with them. How easy for an artful, cunning man to fill with prejudice or poison the mind of some inexperienced, unsuspecting juror; or by sounding them find out his man and secure him. Then if his friend is not called at first, by repeated challenges he can nearly always succeed in getting him on the jury.

When a lawyer has a bad client or a bad case, he challenges the best men of the jury in the hope of getting a friend of his client's or a man that he can influence: And when he has obtained one such man on the jury, how confidently he relies upon him, if not to win his case, at least to hang the jury and prevent a verdict against him. If the majority of a jury could render a verdict we should have no such disgraceful struggles in courts of justice.

Is there a lawyer on this floor who does not know from his own experience at the bar that improper influences have often controlled verdicts?

What good reason can be given for continuing the requirement of unanimity? Does it secure absolute certainty in the correctness of the verdict? We all know that such is not the case, for the courts frequently are constrained to set aside the verdict because it is manifestly unjust. Does it protect the defendant from an unjust demand? Possibly in some cases it may; but in such cases the court can protect him against a wrong verdict by

granting a new trial. On the other hand, does it not far more frequently do injustice to the plaintiff? One man in twelve may save the defendant; yet one man in twelve may do great wrong to the plaintiff. And the probabilities, in all such cases, are eleven to one that the plaintiff was right and the defendant wrong.

On theory and principle there seems to be no good reason why a majority of the jury in civil cases should not be allowed to render a verdict. But in deference to the old rule it may be well to require two-thirds or three-fourths. This, however, can be left to the wisdom of the Legislature and the results of experience. And if, after a fair trial, it is not satisfactory, the old rule can be restored.

Of course in all cases where the jury are not unanimous, the defeated party will have the advantage of that on a motion for a new trial. The parties and court will also have the benefit of the individual opinions of the jury. This will be of very great advantage; for the opinions of some jurors is entitled to far more consideration than the opinions of others. Especially will this be valuable in cases where the damages claimed are not susceptible of calculation, but rest in the judgment of the jurors.

There is a vast difference between the court and jury of England and the court and jury of America. There the court is the representative of the King and the jury of the people; here they are both the representatives of the people. In England there lingers still a little of the old jealousy and strife between the crown and the commons; in this country there should be none of that feeling. Here the court and jury are not antagonistic. Their inclinations and sympathies are the same. Instead of being kept in a jealous attitude to each other, (which they really sustained when the jury system was established,) let them be brought into closer sympathy and union. As they have the same object in view—the due administration of justice—they should mutually assist each other.

Let the old forms pass away with the old order of things that called them into existence. Let us emancipate our jurisprudence from the shackles of a barbaric age, and permit it to keep pace with the advancing column of an enlightened civilization.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny.

Mr. PARSONS. I ask for its reading.

The CLERK read as follows:

To add to the end of the section: "But the Legislature may by general law authorize the courts in civil cases to receive the verdict of less than twelve, when the whole number cannot agree."

On the question of agreeing to the amendment, a division was called, and the Clerk reported twenty-nine members, less than a majority of a quorum, voting in the affirmative.

Mr. H. G. SMITH. Mr. Chairman: Before the announcement of the vote is made by the Chair, I call for a count of the House.

The CHAIRMAN. Not being a majority of a quorum voting in the affirmative, the amendment is rejected.

Mr. H. G. SMITH. There was a majority of those present voting for the amendment. I call for a count of the House.

A count of the House was made, and the Clerk reported sixty-nine members present.

The CHAIRMAN. The question is on the section.

Mr. H. G. SMITH. I think the vote ought to be again taken on the amendment. At least a dozen members have entered the Hall since the amendment was decided lost.

The CHAIRMAN. The vote on the amendment will be taken again. The question is upon the amendment of the gentleman from Allegheny (Mr. J. W. F. White.)

On the question of agreeing to the amendment another division was had, which resulted thirty-four in the affirmative, and thirty-six in the negative. So the amendment was not agreed to.

The CHAIRMAN. The question recurs on the section.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

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 thoughts 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 libel the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

Mr. MACCONNELL. The word "men" in the second sentence of the printed article should be "man." I ask unanimous consent to have that change made.

Mr. KAINE. How about the word "thoughts," in the same sentence?

Mr. MACCONNELL. That word is right.

Mr. DALLAS. It is "thoughts" in the Constitution of 1838, according to our printed copy of that instrument.

The CHAIRMAN. The Clerk informs the Chair that the word in the official copy at the Clerk's desk is "man" and not "men."

Mr. MACCONNELL. Then it is satisfactory, and I withdraw my request for unanimous consent to change the word. I only ask gentlemen to note the correction on their files.

Mr. DALLAS. Mr. Chairman: I now offer to amend the section by striking out all after and including the words "in prosecutions," to and including the word "evidence," and inserting in lieu thereof the following:

"All papers relating to the conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, shall be privileged, and no recovery or conviction shall be had or sustained in any suit or prosecution, civil or criminal, for the publication thereof, except when such paper shall have been maliciously published, and malice shall not be presumed from the fact of publication."

Mr. Chairman, I consider this the most important question that can arise in considering the article that the committee of the whole has now before it, and I regret that it should be necessary to enter upon its discussion at so late an hour, when many of us have become naturally weary of debate, and I also regret that in presenting this proposition I am compelled to encounter a more serious difficulty in the objection that we all have to altering any portion of the Bill of Rights.

I do not concur, Mr. Chairman, in the views so ably expressed by the gentleman from Indiana, (Mr. Clark,) against our power to make any alterations in the ninth article. I do not doubt our *power* to act upon it, but because I have come

to consider this article as the charter of my most sacred rights as a citizen of Pennsylvania, I am very loth to lay my hand upon it in any particular, and I say this much at the outset in order that delegates may understand that in offering this amendment, I believe there is good reason for its adoption, and that I do not offer it flippantly or without serious reflection. I beg, therefore, that I may have, for the little I have to say in support of this proposition, a fair, candid and patient hearing.

I want that this committee of the whole shall understand first what it is that I do not ask for the press of Pennsylvania. I do not ask that its freedom shall be extended one jot beyond its present scope under the Constitution so far as the publication of matters relating to the private conduct of private individuals is concerned. On the contrary, I want that every man's house shall be his castle, and every man's private reputation his sacred jewel. Do not, I beg, so far mistake me as to suppose that in the proposition I have offered, and am now advocating, I am asking for the press the right to transgress that reasonable restriction which places every man's private conduct and private concerns beyond public exposure through the press. Precisely what I do desire by this amendment is that in all papers affecting public officers, and in all publications which relate to public affairs in which the public have an interest and are deeply concerned, the press of Pennsylvania shall not be *presumed* to be malicious, but that malice, when alleged, must be proved to exist. In other words, that the legal presumption shall be made accordant with the presumption in fact that public matters are treated of in the public prints for public reasons, and not for the gratification of personal spite.

We have had a class of cases under our law of libel looking in the direction to which my amendment points. Still we have had others that greatly diverge from the principle upon which I think the law of Pennsylvania should be established in this matter. In the case of the Republic against Dennie, reported in 4 Yeates, p. 267, the Court, Yeates, Justice, instructs the jury in these words:

"That if the production was honestly meant to inform the public mind, and warn them against supposed dangers to society, though the subject may have been treated erroneously," \* \* \* \* \*  
"as the judgments of the jury may in-

cline them to think individually, they should acquit the defendant."

That is the earliest case upon this subject in this State, and in that case you will observe it was laid down that if a man is actuated by a desire simply to inform the public, then, though he may have informed them erroneously in the judgment of the jury, still he is to be excused, because the element of malice, which should be the controlling consideration in determining the question of guilt or innocence, is not present.

In the later case of the Commonwealth against Sanderson, decided in this judicial district, we have this language from the court:

"It may be safely laid down as a general law, that in all criminal prosecutions the *motive* which influenced the mind of the individual charged, at the time he commits the alleged offense, is the criterion by which the jury are to determine his guilt or innocence."

"It may safely be asserted that the act of publishing a libel is not of itself punishable as a crime. The evil motive must enter into the constitution of the offense of libel, as much as that of any other crime."

This case was afterwards followed in the case of the Commonwealth vs. the proprietors of the *Evening Bulletin*.

Mr. Chairman, our statute law upon this subject, which I refer to for the purpose of getting the whole subject fairly before the committee, is as follows:

"If any person shall write, print, publish or exhibit any *malicious* or defamatory libel, tending either to blacken the memory of one who is dead or the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, such person shall be guilty of a misdemeanor."

I have cited the cases just referred to for the purpose of meeting the objection which may be founded upon them, that the amendment I have offered proposes simply to incorporate into the Constitution what is now the law of the State of Pennsylvania.

Mr. BARTHOLOMEW. Will the gentleman from Philadelphia pardon an inquiry?

Mr. DALLAS. Yes, sir.

Mr. BARTHOLOMEW. Do I understand the gentleman to imply or infer, as I understood him to mean from his argument, that there is a legal presumption of malice arising now from the publication of papers as to official conduct?

Mr. DALLAS. I am coming now to the consideration of a case tried in this Commonwealth which does so decide.

Mr. BARTHOLOMEW. The mere publication?

Mr. DALLAS. Yes, sir.

Mr. BARTHOLOMEW. Without proof?

Mr. DALLAS. Without proof or malice.

Mr. BARTHOLOMEW. I do not believe it.

Mr. DALLAS. I have answered the gentleman's question, and in the course of my argument I will answer it further, for it is directly in the line of much I have to say. Now, if the three cases which I have cited were the settled law of the Commonwealth, and if it were not possible to change it; if they were, there would be no purpose in the amendment which I have offered, because they do decide that in every case the ingredient of malice is as necessary an ingredient of the crime of libel as of any other crime known to our code, and they throw the burden of proof of malice upon the man who alleges it. But that is not the settled law of Pennsylvania. It is not the unchangeable law of Pennsylvania. If it were the settled law the decision which I am about to quote could not have been made; and if it were the unchangeable law I would not ask to have my amendment inserted.

Mr. Chairman, my amendment looks to the liberty of the press—that liberty which has always been held by the people of our State to be one of the most important safeguards of all liberty. If the decisions I have read be correct law, the importance of the subject is such that they should be made constitutional law. But these decisions are not uniform. I have in my hand the probably latest decision upon this subject in the State of Pennsylvania. I refer to the charge to the jury made by a judge of the court of common pleas in this district (the same who decided the *Bulletin* case) in the case of the Commonwealth against Taylor. That was a case in which the city editor of a newspaper called the *Press* undertook to report upon certain doings of certain persons whom he designated as the "Whisky Ring." The defendant's very able counsel took the position that what had been published had been asserted upon proper information, and upon reasonable cause, and that the defendant was entirely free from malice toward those to whom the article alluded. But, sir, he

was not permitted to show the reasonable cause for that publication, nor to offer a single witness in rebuttal of the mere forced presumption of malice on his part, which the Court held that the law attached to the publication.

In the charge to the jury, the judge said:

"A libel is a malicious publication. Malice is an essential ingredient of the offense. It is therefore important that the jury should understand its meaning."

\* \* \* \* \*

"Malice is a legal term, and implies much more than a particular ill-will. It comprehends not only this, but also wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, a mind regardless of social duty and bent on injury to others, whether any particular person is intended to be injured or not."

That, let it be noted, was said as applicable to a particular libel upon a particular person; and, subsequently, the judge added:

"If you find the publication being proved, its application to the prosecutor established, and the article upon its face a libel, tending to defame the prosecutor and to blacken his character, then I instruct you that the law *presumes* that the act was malicious, and no express malice need be proved."

That is the direct answer to the gentleman from Schuylkill. That decision has not gone to the Supreme Court, but it has been reviewed in the same court in which it was uttered, and that court has granted a new trial, but upon grounds other than those to which I have just referred.

Now, sir, I am not commenting upon that charge in complaint of the judge who delivered it. I have no such petty purpose to serve. I quote it simply for the purposes of my argument, and I insist that it shows that the law of Pennsylvania is not just and fair, or if it be just and fair it is not so clearly settled as justice to a free press in a free State demands that it should be.

The CHAIRMAN. The Chair is obliged to suggest to the gentleman that his time has expired.

Mr. STEWART. I move that the gentleman have leave to go on.

The CHAIRMAN. The Chair hears no objection, and the gentleman will proceed.

Mr. DALLAS. I am deeply indebted to the Convention for this courtesy, for upon

this subject I feel warmly, and have taken considerable interest in it. I desire now to call the attention of the committee of the whole to the fact that the section as reported by the Committee on the Bill of Rights is precisely that which we have in our present Constitution of 1838, and that in turn was taken word for word from the Constitution of 1790; so that from 1790 up to this year of 1873, the constitutional law of the State of Pennsylvania as to the freedom of the press and the law of libel has continued unaltered.

Mr. BARTHOLOMEW. Will the gentleman allow himself to be interrupted again?

Mr. DALLAS. Yes, sir.

Mr. BARTHOLOMEW. Does the gentleman contend that from a publication against another any presumption arises that it was done maliciously? Has not the preliminary question to be passed upon, first, that it is a libel, that the publication itself has a tendency to bring a man into ridicule, hatred or contempt? And is not that a subject that the court must pass upon before any evidence under such a bill of indictment can be submitted to the jury at all?

Mr. DALLAS. If I do not answer the gentleman fully before I get through, I beg that he will call my attention to it at the close; but I will save my own time and husband that of the committee by answering him, not here, but in my own way and in the proper place in my remarks.

Mr. Chairman, the first statutory provisions upon the subject of libel or slander were those of 1275 and 1328, known as the statutes of *Scandalum Magnatum*. Those statutes had in them not one word of freedom or of liberty to the people or the press. They provided only that any person uttering any scandal of any duke, baron or other noble or great man of this realm should be severely punished. Such were the earliest provisions on the subject of libel.

In 1682 certain laws were agreed upon in England for the government of the province of Pennsylvania, and in them a slight step in advance was made. It was then provided that any person who uttered any scandalous matter against any magistrate—and then came the advance—or other individual, should be punished. But, sir, when we reach the year 1776, when the first Constitution of the independent State of Pennsylvania was to be framed, then, from the glorious atmosphere surrounding those then charged with the



duty of making our Commonwealth's fundamental law, there breaks upon us the glorious light which discloses that "the people have a right to freedom of speech, and of writing and publishing." I ask you to observe, Mr. Chairman, how, as the liberty of the people advanced, the freedom of the press advanced with it. Next came this section of the Constitutions of 1790 and 1833, which is familiar to all of us. Through this Convention is presented the first opportunity which the people of Pennsylvania have had since 1838 to express themselves upon this subject.

Upon the question, Mr. Chairman, of whether or not the people should take the step I propose, I beg the patience of the committee while I call their attention to what has been done by that other great, free people from whom we have derived our liberty and laws, upon this same question, during the period from 1838 to this time. What, during that period, has become the law of Great Britain upon this subject?

The committee will observe that in the amendment I have offered I have used the phrase "privileged," and that I propose to provide that all papers relating to the conduct of officers and men in public capacity, or to any other matter proper for investigation or information, shall be *privileged*. I have selected that word as one which has been defined to mean just what I desire to express. In the case of *Wright vs. Woodgate*, decided by Baron Parke in 1851, the phrase "privileged communication" is said to mean that "the occasion on which the communication was made rebuts the evidence *prima facie* arising from a statement prejudicial to the character of the plaintiff, and puts it upon him to prove that there was malice, in fact that the defendant was actuated by motives of personal ill-will, independent of the occasion on which the communication was made."

The term "privileged communication," is one which, in a confined sense, has long been well understood by lawyers. A servant who, upon applying for a new place, refers the person to whom he applies to his last employer, takes the risk of the answer that last employer may make as to his character; and no matter how injurious the reply to such an inquiry might be, the party making it is to be held clear of any presumption of malice, because information so given is a privileged com-

munication, and this is a very familiar illustration of the principle.

The reason for the privilege in such a case is very clear; it is that the communication is made upon an occasion where the parties have a mutual interest in the subject, and to put it briefly upon an occasion on which there really can be no presumption of malice, for the circumstances negative any such presumption, and make it utterly unreasonable that malice should be *assumed* to exist, and that the burthen of proving its non-existence should be thrown upon the party making the communication.

The principle which I have endeavored to explain has, as an examination of the cases will show, been extended by the English courts to all cases of public employment, or of public interest. The whole community have a common interest in public affairs. The whole community have a right to receive, through the organs of public opinion, the reflex of different views and information (the best that they can give) upon all matters of public importance; and there is, therefore, no more ground for presuming malice in such cases than there is in the case of seeking for private employment and information properly given in relation thereto.

Now I say, Mr. Chairman, that this has been the view of the English courts for some time past. It did not come from them suddenly and at once, but the principle has grown little by little until we finally have it as I have stated it. In support of this assertion I will by no means trouble this committee with every case that would sustain it, but I ask their patient attention whilst I present two or three of them.

In the case of *Guthercote vs. Miall*, reported in 15 Meeson & Wellsby, 319, which was a newspaper case, injurious comments had been made upon a sermon, and not only upon the sermon, but upon the acts of the clergymen as well. In that case Baron Bramwell said:

"Happy for us it is that it is true that every man has a right to discuss matters of public interest. \* \* \* Whoever fills a public position renders himself again happily—open to public discussion. The plaintiff, therefore, in my mind, did not only what was a proper subject of discussion, but also a subject of reprehension \* \* \* and this subject may have been dealt with, and very properly, with considerable animadversion."

The judge continues to characterize the alleged libel as "unworthy of an educated gentleman," as "calculated to expose to contempt and aversion;" and yet he says:

"Is it possible to say they are fair and reasonable comments upon public matters? I really do not see it for my own part; but it is a matter for your opinion."

And he left it to the jury. He did not attempt to say that they must presume malice even from an article which he characterized as outrageous and unworthy of a gentleman; but he said, as he ought to say on all matters of fact, that whether it was malicious or not was a matter for the jury to pass upon.

In the case of *Kelly vs. Tinling*, which was decided upon the same principles, Chief Justice Cockburn, Lord Chief Justice of England, in speaking of a newspaper article of the same character, held the alleged libelous matter to be upon a "subject of public interest," and then said:

"Every word of the summing up of the learned judge which has been read, (the same which I have just read,) seems to me to have been said with the most perfect propriety."

And in a subsequent case, as recent as 1868, the same learned Chief Justice of England said:

"Our law of libel has, in many respects, only partially developed itself into anything like a satisfactory and settled form. The full liberty of public writers to comment on the conduct and motives of public men has only in very recent times been recognized. \* \* \* Newspaper comments on matters of public interest are privileged."

And what that word "privileged" means, I have already, I trust, fully explained.

Still later, in 1872, we have another reported case in which the majority of the court, consisting of judges whose names are known to almost every man in this Convention, because the most of us are lawyers—Justices Willes, Byles and Brett—used this language:

"Upon the ground that every man has a right to discuss freely, so long as he does it honestly and without malice, any subject in which the public are generally interested; to state his own views and to advance those of others for the consideration of all or any of those who have a common interest in the subject; and that whilst he does so he has a privilege at-

taching to such right of free discussion of the same character which has been held to attach to numerous instances in which liberty of speech has been allowed upon grounds of public and social convenience, where the speaker or writer and the person or persons addressed have had a duty or interest in common, the existence of which has been held to rebut the inference of malice, \* \* \*

\* \* \* the jury in civil cases, equally as in criminal cases, are the proper tribunal to judge the question of libel or no libel. But it is not competent to the jury to find that, upon a privileged occasion, relevant remarks, made *bona fide* without malice, are libelous."

I will refer to a single other English case very recently decided, and not yet reported in any book of reports. I read from a newspaper, where the Lord Chief Justice is reported to have used the following language:

"An editor, whose business it is to comment upon public affairs, has a perfect right to comment upon Mr. Odger's conduct, and to meet him in the strongest possible way. No doubt ridicule may be a most effective mode of combating such doctrines, but if such ridicule is fairly and properly done, and does not exceed the fair limits of comment and criticism, then the law says the occasion is one where the presumption of malice is rebutted."

Now, sir, as I promised, I have read but from very few of the many recent English authorities on this subject. My intention has not been to endeavor to urge upon this committee that English precedents should be binding on this Convention, but I have intended to show that from the period of 1790 to this time the English people have advanced beyond us in this matter, and that, therefore, there is nothing reasonable in the suggestion that because we find this section in our Bill of Rights of 1790 and 1838, we should be satisfied to adopt it now without change.

Recurring again to my amendment for the purpose of having it understood, I desire to say that its effect, if adopted, will be this: That even proof of truth will not sanctify malice in a publication upon any subject, not even upon a matter of public interest, but that an accidental misstatement made upon probable cause, and after fair investigation, and in relation to those public affairs in which the whole community have an interest, will not be per-

mitted to consign to the penitentiary the proprietor of the newspaper who may publish it.

I am informed, Mr. Chairman, of the objections to this proposition. The principal one is that its adoption would deter good men from becoming candidates for public position. I say that any man who fears the newspaper press, under such guarded freedom as I ask for it, had better examine his own conduct. As was said by one of the English judges from whom I have quoted, every man who seeks public position makes proffer of his character. The tribunal to whom he proffers his character is the public.

The people are his judges, and the advocates on the one side, and the other is the press. I would accord to these advocates simply the same privilege that you allow to advocates in our courts. Let the door be open to free statement as to each candidate, and his character will be as fairly and justly tried in that tribunal as it would be in any other. He himself has a right to that free discussion, and it is better for him that it should be free; and the people have a right to it, and it is absolutely necessary they should have it.

Mr. Chairman, the time I have already occupied admonishes me to proceed no further. I wish simply to advert to one more of the main reasons for the adoption of this amendment, and I will close. The freedom of the press has always been the people's bulwark against their rulers. Their is little danger to the people from corrupt Governors, from bad legislators, or even from that vilest of all things, a venal and wicked judge, if they can maintain a free press. But, sir, the power of corrupt combinations and rings of politicians is greatly to be feared, and if the newspaper press of this city and of the State be not really free as the press of England is free, to attack bad public servants fearlessly and boldly, and plainly to drag before the people the misdeeds of those who, by seizing political power, have become our masters, we will be without that protection which alone has proved to be effective against wicked rulers of the people in other days and countries.

Mr. H. G. SMITH and Mr. CARTER. I move that the committee rise.

The motion was agreed to.

The committee accordingly rose, and the President *pro tem.* having resumed the chair, the Chairman (Mr. Bigler) reported that the committee of the whole had

had under consideration the article (No. 18) reported from the Committee on Declaration of Rights, and had instructed him to report progress and ask leave to sit again.

Leave was granted the committee of the whole to sit to-morrow.

#### RATIFICATION OF AMENDMENTS.

Mr. J. PRICE WETHERILL presented the following proposed plan for securing the votes of the people on amendments to the Constitution, which was referred to the Committee on Suffrage, Election and Representation:

"The amendments proposed by this Constitution shall be submitted to the qualified electors of this Commonwealth at a special election to be held on the — Tuesday of — next. The said election shall be held, regulated and conducted in the several counties of this Commonwealth, according to existing laws, except that the return judges of election of each county shall transmit by mail to the President of this Convention a triplicate original return of the said election within five days thereafter.

"The said election shall be held, conducted and regulated in cities of over one hundred thousand inhabitants, under the authority and supervision of three commissioners of elections in each of said cities, to be chosen by this Convention, upon the principle of a limited vote, which said board of commissioners, or a majority thereof, shall appoint for each election division within said cities, two canvassers, to register voters, and one judge, two window inspectors and two return inspectors, to hold the said election in the said divisions respectively; said commissioners shall also have the power to arrange for the places of registration and election, the manner of assessing the personal tax, when and to whom payable, and directing the payment thereof into the proper treasury, and shall have power to fix the times of opening and closing the polls, to direct the counting of the vote hourly or otherwise, and the manner thereof, to see that the return of each election poll shall be transmitted as herein directed, on the day following the election, and, generally, the said board of commissioners, in their respective cities, shall have full power and authority to direct, regulate and make all provision proper and necessary to hold and conduct the said election. The commissioners of the proper city

and county shall furnish the necessary ballot-boxes, stationery, blanks and books necessary to hold the said election, to the officers of each election poll, and shall cause to be printed and posted the said registers of voters, as the said board shall respectively direct, and publish the proclamation of the sheriff of the proper county, to be made by him, for the holding of the said election. The said canvassers and election officers shall be paid by the proper city and county for their services, such sums as the said boards shall respectively direct, and the said commissioners shall be paid by the proper city or county the sum of five dollars for each day they shall be actually engaged in their official duties, and each board shall have the power to appoint a secretary and fix his compensation, which shall be paid in like manner. The ballot of each voter at said election, shall have printed or written on the outside fold thereof, the word "CONSTITUTION," and in the inside the words "For the Constitution," or "Against the Constitution," and as to any amendment that may be separately submitted, on the outside fold thereof, "The ——— amendment," and on the inside "For the ——— amendment," or "Against the ——— amendment," and the said commissioners of the proper city or county shall cause to be printed and delivered to the said boards of commissioners, respectively, a sufficient number of the said ballots for use at said election, at least twenty days prior

thereto. The returns of the said election shall be laid before this Convention by the President, at an adjourned session thereof, on the fourth Tuesday thereafter, and shall then and there be counted, and if it appear therefrom that the proposed amendments to the Constitution have been adopted by a majority of votes, it shall be the duty of the President of this Convention to announce and declare that the Constitution, so amended, shall be thenceforth in full force, in the name and on behalf of the people of the Commonwealth of Pennsylvania."

#### EXAMINATION OF SOLDIERS' ORPHANS.

Mr. STANTON presented a communication from Elizabeth E. Hutter, president of the board of managers of the Northern Home for Friendless Children, Twenty-third and Parrish streets, Philadelphia, inviting the members of the Convention to attend the annual examination of the soldiers' orphans in the institute connected with the Home on Thursday, the twenty-second instant, which was read.

Mr. LAMBERTON. I move that the thanks of the Convention be tendered for the invitation just received.

The motion was agreed to.

Mr. WORRELL. I move that the Convention adjourn.

The motion was agreed to, and (at two o'clock and fifty-eighth minutes P. M.) the Convention adjourned.

## ONE HUNDRED AND FIFTH DAY.

THURSDAY, May 22, 1873.

The Convention met at half past nine o'clock A. M., Hon. John H. Walker, President *pro tempore*, in the chair.

Prayer by Rev. J. W. Curry.

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

LEAVES OF ABSENCE.

Mr. BRODHEAD asked and obtained leave of absence for Mr. Curtin for a few days from to-day.

Mr. WRIGHT asked and obtained leave of absence for himself for this afternoon and to-morrow.

Mr. BROOMALL asked and obtained leave of absence for Mr. Davis for a few days from to-day.

Mr. HEMPHILL asked and obtained leave of absence for Mr. Darlington for the rest of this week.

Mr. GILPIN asked and obtained leave of absence for himself for a few days from to-morrow.

Mr. BREEBE asked and obtained leave of absence for Mr. Minor from to-day, on account of illness.

Mr. HARRY WHITE asked and obtained leave of absence for himself for two days.

Mr. BROOMALL asked and obtained leave of absence for himself for to-morrow.

PAY OF MEMBERS.

Mr. BRODHEAD submitted the following resolution:

*Resolved*, That the President be and he is hereby authorized to draw his warrant in favor of each member of this Convention for the sum of one thousand dollars and the additional mileage; and that the further consideration of the pay of members be postponed for the present.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for.

Mr. H. W. PALMER. I call for the yeas and nays.

Mr. ELLIS. I rise to a point of order. My point of order is that this whole subject has been referred to the committee, and the proper mode would be to discharge the committee. It cannot be

brought up in this way without discharging the committee from the consideration of the subject.

The PRESIDENT *pro tem*. The Chair rules that the point of order is not well taken. The suggestion made by the gentleman may be proper to be urged as a reason to influence members' votes; but it is no ground for over-ruling the resolution as out of order.

Mr. H. W. PALMER. At the suggestion of several gentlemen, I withdraw the call for the yeas and nays for the present.

Mr. LANDIS. I move you, sir, that the resolution be referred to the select committee on that subject.

Mr. LILLY. That is not in order now.

The PRESIDENT *pro tem*. The resolution is not as yet before the Convention. The question is on proceeding to its second reading.

On the question of proceeding to the second reading and consideration of the resolution, a division being called for the yeas were twenty-five, which being less than a majority of a quorum, the resolution was not ordered to a second reading.

DAILY SESSIONS OF THE CONVENTION.

Mr. NEWLIN. I submit a report from the Committee on Rules.

The CLERK read the report as follows:

*To the Constitutional Convention:*

The Committee on Rules report the following:

*Resolved*, That the Convention sit daily from half-past nine o'clock A. M. until three o'clock P. M.

JAMES W. M. NEWLIN,  
*Chairman.*

Mr. NEWLIN. I move to proceed to the second reading of the resolution attached to the report.

Mr. LILLY. It must lie over under the rule.

Mr. NEWLIN. It is not a rule. It is simply a resolution. This subject was referred to the Committee on Rules with directions to report upon it. However, on a suggestion that is made to me, I withdraw the request for the second reading.

of the resolution for the present and will let it lie on the table.

The *PRESIDENT pro tem.* The resolution will lie on the table.

#### SALARIES OF MEMBERS.

Mr. CURRY. I am directed by the select committee on that subject to make a report upon compensation.

The *CLERK* read the report as follows:

The select committee appointed by your honorable body to take into consideration the amount which should be fixed as compensation of members and report thereon, respectfully beg leave to report:

*First.* That they find on examination that the act of Assembly by which the compensation of members was fixed at \$1,000 and mileage, &c., was by the Legislature subsequently repealed and the fixing of an amount of compensation was referred directly to this Convention.

*Second.* That the repeal of the act fixing the compensation at \$1,000 was based upon the evident fact that the time probably occupied by the Convention would be much longer than originally supposed to be necessary, and that therefore the compensation as originally fixed was wholly inadequate to meet the just expenses of members.

In consideration of the premises, your committee are of opinion that the compensation of members should be fixed at such reasonable sum as will at least meet the expenses of members and therefore report the following resolution:

*Resolved,* That the compensation of members of this Convention be and hereby is fixed at \$2,500, and mileage at ten cents a mile circular for two sessions.

J. W. CURRY,  
J. B. GUTHRIE,  
WM. J. BAER,  
M. F. ELLIOTT,  
A. B. DUNNING.

The resolution was ordered to a second reading, and was read the second time.

Mr. D. W. PATTERSON. I move that the resolution be postponed for the present.

On the motion to postpone, the yeas and nays were required by Mr. Cochran and Mr. D. W. Patterson, and were as follows, viz.:

#### YEAS.

Messrs. Ainey, Bailly, (Perry,) Bannan, Bardsley, Bigler, Black, Charles A., Brodhead, Broonall, Carter, Cochran, Corson, Fulton, Gilpin, Hemphill, Kaine,

Knight, Lamberton, Landis, Lilly, M'Clean, Palmer, H. W., Patterson, D. W., Purviance, Sam'l A., Rooke, Ross, Russell, Smith, Henry W., Struthers, Walker, Wetherill, Jno. Price, White, Harry and White, J. W. F.—32.

#### N A Y S.

Messrs. Achenbach, Addicks, Andrews, Baer, Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Beebe, Bowman, Brown, Buckalew, Collins, Cronmiller, Curry, Davis, De France, Dodd, Dunning, Edwards, Elliott, Ellis, Guthrie, Hay, Hazzard, Heverin, Horton, Lawrence, Lear, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Mitchell, Mott, Newlin, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Porter, Pughe, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Van Reed, Wetherill, J. M., Wherry, White, David N. and Wright—55.

So the question was determined in the negative.

*ABSENT.*—Messrs. Alricks, Armstrong, Biddle, Black, J. S., Boyd, Campbell, Carey, Cassidy, Church, Clark, Corbett, Craig, Curtin, Cuyler, Dallas, Darlington, Ewing, Fell, Finney, Funck, Gibson, Gowen, Green, Hall, Hanna, Harvey, Howard, Hunsicker, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Purman, Purviance, Jno. N., Read, John R., Reed, Andrew, Reynolds, Runk, Smith, H. G., Turrell, Woodward, Worrell and Meredith, *President*—45.

Mr. REYNOLDS. I am paired with Mr. Church and therefore ask to be excused from voting.

No objection being made, Mr. Reynolds was excused.

The *PRESIDENT pro tem.* The resolution is before the House.

Mr. AINEY. I offer the following substitute:

*Resolved,* That a warrant be drawn in favor of each of the several members of this Convention, by the President thereof, on the State Treasurer for \$1,000, less such sum or sums as shall have been already drawn by any member on account of salary.

Mr. COCHRAN. Mr. President: I hope that the amendment offered by the gentleman from Lehigh will not prevail, for the simple reason that it is not practical in its nature. If any member has received any part of his compensation, he has simply received it as a matter of accommodation private to himself with the

State Treasurer. The warrant would necessarily have to be drawn for the whole amount; and of course the warrant being so drawn for the whole amount, the State Treasurer will see that whatever has been paid is deducted from that warrant.

If the amendment were put into proper form and that part to which I have referred stricken out, I should vote for it; for I see no reason why the members of this Convention should not have a warrant drawn in their favor for the amount of one thousand dollars and their second mileage. But I do hope that this Convention will not now proceed to attempt to fix an amount of salary as their compensation. If we undertake to change the compensation which was originally fixed by act of Assembly, if we consider that there is sufficient reason for doing that, let us at least know what service we are to render for the compensation before we attempt to fix it. We ought certainly to have definite data as to time and service before we undertake to change the amount which was originally appointed. It is impossible for us to do that to-day. There is not one member in this House who has such a power of prescience that he can foretell when the sessions of this body are to close; and until we do know that, I insist upon it that we are not competent to deal with this question of salary. We have not sufficient knowledge to fix satisfactorily the amount of compensation which we shall finally receive, if it be the opinion of the majority of this committee that it would be right to change the original sum of one thousand and increase it to a larger sum.

Now, sir, on that question I am not prepared to declare, nor is it important at all, what my individual view is, but when we do fix our own compensation under the existing statute, let us at least do it with full knowledge of the time that we are going to occupy here and of the compensation which would be right and reasonable for that time; but do not let us anticipate, and before that time is reached, or any man can determine in his own judgment how long our session is going to last, to fix that sum at what I conceive to be, with due respect to the committee, the enormous amount of \$2,500.

Mr. BRODHEAD. I move to amend the amendment by striking it all out and inserting as follows:

"That the President be and hereby is authorized to draw his warrant on the

State Treasurer in favor of each member of this Convention for the sum of \$1,000 and the additional mileage; and that the further consideration of the compensation of members be postponed for the present."

The PRESIDENT *pro tem*. The amendment is before the Convention.

SEVERAL DELEGATES. That amendment has just been voted down.

Mr. BEEBE. I move to amend the amendment, to strike out \$1,000 and insert \$1,200.

The PRESIDENT *pro tem*. It is not subject to further amendment.

Mr. LEAR. Is the subject now under discussion the various amendments to this report?

The PRESIDENT *pro tem*. The Chair is of opinion that it would not be in order to amend the amendment of the delegate from Northampton because the substance of it has been voted down. The Chair will entertain the motion of the delegate from Northampton, although the same proposition has been voted down; it is now presented in another shape, it having been before presented as a separate resolution.

Mr. LEAR. Mr. President: I am opposed to these amendments and I am opposed to the resolution, because I do not think they meet the question squarely. There seems to be a disposition in these two amendments to postpone the final consideration of this question to some future day. I voted against postponing the consideration of this subject at this time, because I think that we can meet it now as well as we ever can, and I am prepared to give my opinion as to what we ought to have as compensation, or at least as to what we ought to have if it had been left to us, as well as if we stay here for two years. Although I believe, as I believed at the time I was elected to this position, that the Legislature, in fixing one thousand dollars, had fixed a very low, and I might say a mean, compensation for the members of this Convention, yet every man who was elected to this body was elected upon an implied contract, and he undertook the job, for better or for worse, for that sum. The man who "goes back" upon it to-day acts in bad faith to the people of this Commonwealth, who expected that the members of this Convention would serve for one thousand dollars each; and whatever our time may be worth, whatever our services may be worth or may not be worth, when we have

undertaken upon a special contract to do a thing for a certain price, we have no right to fix our compensation by a *quantum meruit*. We are to take one thousand dollars each, by the contract we have made. If it is an provident one, if we do not get properly paid, it is our own fault, for contracting too late. We came here of our own accord, and we ought to keep good faith with the people who sent us here, and no man can properly recede from that position, it seems to me.

What I wanted to do, if this resolution had not been loaded with impracticable amendments, was to amend it by striking out "\$2,500," and inserting "\$1,000," and then dispose of the subject, and not have it to come up from day to day and have the sessions of this Convention prolonged from time to time to see how much we can earn, and what we shall get for the time we stay here. If we are limited to a thousand dollars, we may be limited in the duration of this Convention. If we are to be paid according to what our time is worth, the sessions of this Convention may be interminable. I want to fix it now, and let every man know, as I had supposed he did know, that he was serving his constituents for the sum of \$1,000.

This question of compensation is as practical a question to me as to any other member of this Convention; but having undertaken this work, however much I may lose by the operation, I intend, if I do stay to the end, to stay for the compensation that was fixed by the Legislature and do the work which I undertook to perform for that consideration.

Mr. DE FRANCE. I should like to ask the gentleman a question, although it is rather a personal matter. I should like to inquire how much the gentleman's practice at law in the county of Bucks since he has been a member of this Convention by going home and leaving the rest of us here has paid him?

Mr. LEAR. I am prepared to answer that question, for I looked at my fee book a few days ago. For the six months ending on the twelfth of May, of this year, my practice had amounted to over the sum of two thousand dollars less than it did during the corresponding period of the year before.

Mr. DE FRANCE. That does not answer the question fairly. I want to know how much money you made by the actual practice of the law since you have been a

member of this Convention, by going home and keeping the rest of us here? [Laughter.]

Mr. LEAR. I do not think the gentleman has a right to inquire into my private business. He is not a revenue assessor.

Mr. DE FRANCE. The gentleman is under no obligation to answer, and I admit his right not to answer. But I think he has told me that he has been away as long as three or four weeks at a time attending to his law business.

Mr. LEAR. No, sir; I beg your pardon. I have stated what I think is pertinent to this question, how much my business has fallen off. I say, during six months it has fallen off more than two thousand dollars from the corresponding period of the year before, and I think that is answer enough to the gentleman's question.

Mr. HAY. I desire to call the attention of the gentleman who offered this amendment to one question. I do not see how the amendment as offered can be practically carried into operation. As I understand it, the amendment is to direct the President of the Convention to draw his warrant for the sum of \$1,000 salary and mileage for each member. How are the amounts of mileage due to each member to be ascertained? The amendment may be very proper in spirit and it may be very proper that it should be adopted; but there must be some mode provided by which the President can ascertain the exact amounts for which he is required by this amendment to draw warrants upon the State Treasurer.

Mr. BRODHEAD. I apprehend there would be no difficulty about that. We already have a mileage in our possession given us whilst we were at Harrisburg.

Mr. HAY. That is the mileage of members to Harrisburg, not to Philadelphia, and will not be of the slightest assistance in determining the sums due for mileage to this city.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lehigh (Mr. Ainey.)

Mr. AINEY. I desire to modify my amendment so as to make it read:

"That warrants be drawn in favor of each of the several members of this Convention by the President thereof on the State Treasurer for one thousand dollars,



including such sum or sums as have been already drawn."

The *PRESIDENT pro tem.* The amendment will be so modified.

Mr. AINEY. On that amendment I call for the yeas and nays.

Mr. HAY. I desire to move an amendment to the amendment offered by the delegate from Lehigh, striking out all after and including the word "including," so as to leave it simply a proposition for the payment of one thousand dollars to each member for salary; when it would read as follows: "*Resolved*, That warrants be drawn in favor of each of the several members of this Convention by the President thereof, on the State Treasurer, for one thousand dollars."

The words proposed to be stricken out seem to be entirely unnecessary and to assume—what is not the fact—that the Convention has heretofore authorized payments to be made to its members on account of salary.

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Allegheny (Mr. Hay) to the amendment of the gentleman from Lehigh (Mr. Ainey.)

The amendment to the amendment was rejected.

The *PRESIDENT pro tem.* The question recurs on the amendment of the gentleman from Lehigh.

Mr. COCHRAN. On that I call for the yeas and nays.

Mr. S. A. PUBVIANCE. I second the call.

Mr. GUTHRIE. I thought I had the floor before the yeas and nays were called.

SEVERAL MEMBERS. Call the yeas and nays.

The *PRESIDENT pro tem.* The Chair was not aware that the gentleman from Allegheny had the floor.

Mr. GUTHRIE. I rose and addressed the Chair.

Mr. COCHRAN. I withdraw the call to accommodate the gentleman from Allegheny.

The *PRESIDENT pro tem.* The Chair will receive the amendment, the call for the yeas and nays being withdrawn.

Mr. GUTHRIE. Then I offer the following amendment to the amendment of the delegate from Lehigh:

"That the maximum salary of delegates to this Convention shall be \$2,500, and the minimum salary shall be \$1,000; that each member may draw the one or

the other sum, as his conscience may dictate; and that the President of the Convention is authorized to draw his warrant on the State Treasurer for such amount." [Laughter.]

Mr. President, I offer this amendment in good faith. I was appointed on the committee to report a proper salary. I went upon the committee in good faith. One of the members of that committee is absent. Another took the ground that if his view did not suit the committee the committee could do as they pleased. My view of this case was that I would agree to any salary that the majority of the delegates of this Convention would suggest; and I understood that three-fourths or five-sixths of the Convention were in favor of some salary from \$2,000 to \$3,000. I voted in committee in favor of \$2,500 as a mean between the two. I believed that sum was the just and proper amount for the services of the delegates in this Convention. But, sir, I find that there are a great many gentlemen here who wish to appear on the record as not desiring to draw more money than the Legislature allowed them in the original act. I desire to give them an opportunity to exercise their conscientious views in regard to the amount they have respectively earned. I believe myself entitled to \$2,500, or I would not have agreed to the resolution reported by the committee. I will therefore vote for it. If I thought I was only entitled to \$1,000, I should only draw that, and no more.

Mr. BRODHEAD. I should like to ask the gentleman from Allegheny about the time that the committee estimated this pay for; when they contemplated the sessions of the Convention were to end, and whether this is the pay up to the present time or to be for the whole session?

Mr. GUTHRIE. I estimated that to cover the entire expenses of the delegates to this Convention; and the committee supposed that when they got through, whether it was sooner or later, the \$2,500 should be their whole compensation.

Mr. LILLY. Did the gentleman and the committee in offering this resolution, take into consideration the fact that some of the members of this Convention have been in the habit of being absent for three or four weeks at a time attending to law suits all over the country, and then coming here, walking into this Hall, and walking out again, or staying long

enough to growl at persons who have been here doing their duty.

Mr. GUTHRIE. As far as I am concerned, I did think of that; but I did not embody it in the resolution. My proposition, however, now is to let that case be settled according to the conscientiousness of such members. [Laughter.]

Mr. W. H. SMITH. Mr. Chairman: When the gentlemen who were elected to perform the duties of this Convention agreed to take the honors and responsibilities of the position, they understood that the pay of each member was to be \$1,000 salary, \$50 for postage and stationery, and mileage for two sessions from their respective homes to the place or places where their sessions might be held. It was also understood and generally believed that their labors would be finished in sixty, or at the longest ninety days. I have no doubt that most of the members elect or to be elected were assured and believed that the time to be consumed would in no possibility exceed the last named period—ninety days.

And the Legislature who fixed the compensation, as I am informed and believed, had this view—in obedience to which they made the compensation \$1,000. They based their action on the fact that the sessions of the Legislature lasted about three months, and the pay they authorized was the same amount, or about the same, the Legislature received. But our sessions have already continued for nearly twice that length of time, and the end of our labors is not yet—indeed no man here can tell when we shall get through. Now, sir, suppose that we shall be able, by great diligence, by avoiding all filibustering and all useless discussions about hours of session and adjournment—suppose that we shall be able to finish by July 4th; then we shall have been employed nearly seven months on this very important but not very cheerful business.

Now, Mr. Chairman, I contend that the amount fixed by the committee is in exact or, perhaps, liberal accordance (I mean liberal to the State) with the views of the Legislature which voted us \$1,000 for what they and every body else acquainted with such matters supposed would be three months' service. Every man, Mr. Chairman, "hath business or pleasure, such as it is," and I do positively know, from many gentlemen here, who are by no means insensible to the honor of sharing in the formation of a new Constitu-

tion for our good and great old Commonwealth, who would never have sought nor accepted the position if they had supposed, at the outset, that they would be expected to leave their homes and occupations months, and to pay their own expenses precedent to their election and during their term of service for \$1,000. There would be little use, Mr. Chairman, to aggravate or intensify their reflections on this point by calculating how much business many of them had sacrificed by their absence from home, but I reiterate that many, very many, would have declined the proffered honor, at the price in money, if they had dreamed that they were to be away from their occupations and their homes for seven and a half, or even six months. It may be said, and truly said, that some of our body did not let their labors here interfere *very much* with their business engagements, but such was not the case with a majority, or else we could not have had a quorum as often as we have had it; and we must even compensate those who served but one or two hours of the day as well as those who served the entire twelve—of which, I must admit, there were but few; you could count these, I think, on the fingers of one hand.

Mr. Chairman, I hope this report of the committee will be adopted, without any unnecessary fume and fuss. I hope that all buncombe will be dispensed with. If there be any gentleman here who may think that he done the State much service, but who, at any time heretofore, may have taken money from the treasury that he did not earn, or that the law did not clearly allow, why, in Heaven's name, let him not burden his sensitive soul by taking all that the committee has named for his labors here; let him leave the money in the much abused Treasury of the State; but those who do not stand in his particular category are not bound by honor or conscience to follow his penitential example.

If any gentleman here would like to make a demonstration against the report of this committee, and shall for fear for being styled a demagogue, let him not hesitate on that account, but let him be very sure, if he be a man who has held office—legislative office—that his former career has been such as will not induce comparisons; so that nobody will wonder how he could take so much heretofore and insist on taking so little now?

In the cure of diseases I believe they sometimes use what is called a "horse-leech." I do not know whether this pleasant creature is so styled because he is used for the depletion of the veins of equine patients, or whether he is called "horse-leech" from his superior size. This same leech, too, has a traditional daughter (I do not know whether she be married) and the cry of the horse-leech's daughter, as you all know, is "give ! give !" And yet it is said that even she, engorged and distended to bursting with her rich and ruddy food, has been known to lose her powers of suction and to drop helpless from the almost empty vein ! I am glad to hope, sir, that no one here has already sucked so much from the life-blood of the State—which is chiefly money—that he feels compelled to fall away from the public arteries in that manner. I shall not ask, "Have we any gorged horse-leech among us ?"

Mr. Chairman, there is a favorite toast that is very much used by the friends of political aspirants when they have got themselves counted into a ward or township, or even a higher office—you have often heard it warmly and admiringly uttered—it is in these words: "Higher honors await him." The country is full of these half-rewarded aspirants, whose only care is to obtain advancement and to get well paid for it. Now, Mr. Chairman, some of these may see in the case we are considering a slight difficulty. There has been some hard talk about those who took back pay and double pay at Washington, and these ambitious gentlemen (if there be any here) would naturally enough be bothered. I have only to say that if any one of these, scorning the ignorant present, is disposed with Excelsior for his motto to rush up the height where

"Fame's proud temple shines afar,"

why just let him pass on, and leave his paltry hire behind him ; let him refuse to count it now, and count on the refusal counting him double hereafter.

Mr. Chairman, I, for one, am not to be deterred from voting what I think to be a fair remuneration for our long service and our expenses here, because the President and Congress unjustly voted and signed themselves back and double pay. The cases are not parallel, as each must only answer for his own deeds done in his respective position. It is certain that the people at Washington did set an example

that all honest men should sedulously avoid and continually denounce. But it does not follow that because the President and Congress took *double* pay for their labors, that we here, being certainly as honest and faithful as they, should not get more than *half* pay for our labors, and no re-imbursement of our expenses, and the one thousand dollars originally fixed for three months would not even half pay for seven months.

The gentleman from Bucks (Mr. Lear) has said that, when we took position here, we knew we were to get \$1,000 for the term. I ask that gentleman whether if that, as he says, was the payment under an implied contract, if that contract did not also imply that the time to be consumed was to be not over ninety days ? The time we *must* be employed will not be less than six and a half months. And I contend that if \$1,000 is fair and proper pay for three months, \$2,500 is not too much for six and a half months, and possibly seven and a half.

Mr. LILLY. I should like to ask the gentleman from Allegheny a question before he takes his seat. I want to know if I understood him aright to say that the President of the United States took back pay ?

Mr. W. H. SMITH. He did not hand any pay back.

Mr. LILLY. He did not get any.

Mr. W. H. SMITH. He got \$100,000.

Mr. LILLY. That is not in this case, and I rose to contradict it.

Mr. W. H. SMITH. He gets, by the act of Congress, \$100,000 more than he would be entitled to receive by the law as it stood at the time of his election.

Mr. MANTOR. Mr. President: When I took a seat in this body it was with an express understanding under a law of this Commonwealth passed by the Legislature of the State that I was to receive the sum of one thousand dollars and mileage for every mile I traveled, not exceeding two adjournments. I went to the city of Harrisburg and did all I could in my feeble way towards helping to organize this Convention. I came to the city of Philadelphia, and with the exception of three days, when I acted under an express rule of this Convention, I have never been out of my seat. I was one of those persons who asked the favor of this House to allow me to go out of my seat on that occasion, and the House voted "aye."

Now, sir, we are met this morning with this question of compensation ; it is fairly

and squarely before us, after the legislative body has duly and deliberately considered it, and concluding that it had not voted us money enough, reasonably has extended the act under which we assembled in that respect. Taking this position this morning I stand here like my friend from Allegheny, (Mr. Guthrie,) who moved the amendment, and I shall vote as I think proper, irrespective of any man's opinion. I care not who he is. I represent a constituency which can read and write, and I believe they are honest men. I believe they understand their wants. I believe they are able to see through the votes which I cast here; at least, they have heretofore endorsed what I have done by letter and by personal compliments.

I stand on this floor this morning to say that inasmuch as the Legislature of the State of Pennsylvania discovered that they had made an error in voting us pay, it is the duty of this Convention to fix such pay for its members as it thinks they ought to have. We have some fair and honest men in communities everywhere. We have also men who take off their hats and very blandly smile and bow to everything that is said in order to court public favor; but thank God while I stand in a public or private capacity, to that class of men I never propose to bow. I stand here this morning to say that I am willing to give to every delegate upon this floor that compensation which I think he deserves. I do not believe there is a delegate here this morning who has not earned over and over the amount of money even that has been proposed to be paid him. When the Constitution of the State of New York was to be revised the Legislature made ample provision, as they thought, for the Convention of that State, as our Legislature undoubtedly thought that they made ample provision for the payment of the salaries of the members of this Constitutional Convention. They, sir, appropriated the sum of \$250,000. That Convention took up its work very much in the form that this did, offering all sorts of resolutions before the Convention. I doubt whether they got the Constitution of Illinois as often in theirs as we have in ours, for we have had it time and time over; but they prolonged their work, and when you look back at the record, which I hold in my hand, it will be plainly discovered who the men are that have increased our time in sitting here. I thank God I can wash

my hands and say I am not one of them. The Legislature of New York appropriated the sum of \$250,000, and after the New York Convention had sat for eight months they estimated their expenses and found that the expenses of that Convention would be \$450,000, and they even exceeded that sum. Yet the incoming Legislature never complained in the State of New York or declined to pay the expenses of that Convention.

Now, sir, let me appeal to this Convention this morning to look at this matter in a careful manner. The last Constitutional Convention met in 1837 and 1838, and from that day to this we have lived under the Constitution that was then framed. That Constitution then cost the State of Pennsylvania the sum of about \$350,000 or perhaps \$400,000, and the Constitution has been in force for thirty-five years. This sum is not so much as it has cost some of the American churches to furnish their children with Sabbath school books; and the \$450,000 or thereabouts that it has cost a great State like Pennsylvania, the keystone of the arch of the Union, for a Constitution during thirty-six years, is a small sum.

Yet gentlemen tell us this morning that our compensation should be merely \$1,000; and why? Because the Legislature first thought so? That law is repealed. No, sir; it is sycophancy. It is worse than that. I cannot find language this morning that will convey my idea as to what I think would be the motive that would cause a man to shrink from the responsibility that is now imposed upon us. I stand here to say that I am willing to give to every delegate here a reasonable compensation for his service, and we are borne out in this for the long months it has taken up our time, and we are not yet near through our labors. I do not know that that compensation ought to be \$2,500; I do not know that it should be \$2,000; but as one member of this Convention, when the yeas and nays are called—"and for God's sake call *them if you desire to place members upon the record*"—*I shall not shrink from responsibility* of saying that I am willing to give each delegate a just compensation, believing that we have the right, as the Legislature has justly conferred it on us, to determine our own pay—and whatever that pay or compensation may be, will not, in my judgment, ever remunerate, at least those who have been faithfully at their posts. I believe, sir:

"What conscience dictates to be done,  
Or warns me not to do,  
Will teach me more than hell to shun,  
And more than Heaven pursue."

Mr. AINEY. In offering the amendment which is now under discussion, I did not intend to make the Convention say thereby that \$1,000 was ample or a fair compensation for the service rendered by the members of this body, for I am free to say that I do not think so. All that I desire or intend by it is to say thereby that this Convention will not favorably entertain directly or indirectly any proposition to fix a higher compensation than that allowed by the law under which we were elected.

In the article on the Legislature we have said, and by almost a unanimous vote, that it is improper for the members of the Legislature to fix their own compensation. Voting money into our own pockets is, to say the least, a delicate thing. The practice which prevails among honorable men on this delicate question is so general that it may be said to have become a rule. In perhaps ninety-nine cases in every one hundred, when the directors of any corporation in this State come to vote upon the question of the salary of its president, in conformity with that rule, and as an act of propriety as well as delicacy, that officer does not vote, but generally withdraws from the meeting of the board while that question is decided. I suppose, sir, that it was in conformity to and in recognition of the propriety of such a rule that we decided to prohibit members of the Legislature from fixing their own compensation. The same feeling of delicacy and propriety which has brought the rule into general practice should influence us in our action here. We shall make a great mistake, in my judgment, if we set an example here of thrusting in prominently this question of salary and exhibiting great anxiety as to the amount we shall receive as compensation—whether it be few hundred dollars more or less. We can leave this question with safety and propriety to the Legislature when they again assemble. They will certainly consider it in a liberal spirit and fully compensate members for the services rendered here. If they do not I shall be satisfied to take the \$1,000 which was originally intended, and it was in that spirit, and that alone, that I offered this resolution.

I agree with the gentleman that \$1,000 is a very small compensation for the time

and services of members here. It is too small. Either members of the Legislature are paid more than they are justly entitled to, or one thousand dollars is too small a compensation for members of this Convention; and I think the Legislature will say so at their next session if we confide it to them, as I earnestly hope we shall.

Mr. DE FRANCE. Does not the gentleman know that the Legislature repealed the act by which they fixed our salary and directed us to fix it, and is there any probability that they will hereafter take the responsibility?

Mr. AINEY. I understand the Legislature did not direct us to fix our compensation. They simply appropriated \$500,000 for defraying the expenses of this Convention, and authorized us, if we chose, to fix our compensation, but I hope we shall not stultify ourselves by any such act of inconsistency. The act relates to the paying of the expenses of the Convention.

Mr. DE FRANCE. And paying the salaries of members.

Mr. BUCKALEW. I rise to appeal to the Convention to vote on this subject without prolonged debate. It is just one of those questions on which we shall gain no advantage by keeping it on the anvil and hammering at it for some time. The plain fact is this: The Legislature fixed the compensation of the members of the Convention by the act of 1872, and in 1873 they repealed that act and said in the statute of repeal that we should perform that duty. I was not in favor of that disposition of this subject at Harrisburg, but the law-making power which controls the State Treasury, without whose consent not one dollar can be drawn, has made an appropriation, conditioned upon our execution of this duty which they have charged upon us, and I am in favor of performing it. It certainly does not limit the powers of this Convention, and therefore is not obnoxious to objection on the ground that the Legislature has attempted to do something outside of its province. Now, in order to execute the public business, and to perform our duty in a proper manner, it is necessary for us to perform this unpleasant duty of saying how much the members shall be paid; and for one I think it would comport with our dignity and our standing with the public if we would quietly proceed to vote on this subject, each man acting on his own individual judgment as to the proper amount. I voted against postponing this subject, because

if we postpone it it will be up again, and after a little while will get into the newspapers and be discussed from the Delaware to Lake Erie. The people will not complain particularly of our acting on this subject, if we do not make a great fuss about it ourselves.

Mr. J. S. BLACK. Mr. President: I am not sure that I understand the precise state of the question, but I wish to define my position on the subject that seems to be before the Convention.

The Legislature, as I understand it, repealed the law which fixed the salaries of the members of this Convention at one thousand dollars. That, so far as any act of the Legislature is concerned, left us without authority to receive any pay at all; but at the time they did that they, in words, appropriated five hundred thousand dollars to be disposed of among ourselves as we might think proper. Now, I maintain that this is no appropriation within the meaning of the Constitution, which forbids that public money shall ever be paid out of the treasury except in accordance with appropriations made by law. If the Legislature should say that a certain sum, a million of dollars—I do not care what words they use—shall be placed at the disposal of a person who has a claim against the Commonwealth, whether for work or for anything else, and that he may take as much of it as he pleases to satisfy himself, that would be no appropriation. It is simply uncovering the treasury to that extent and saying there is so much money which is wholly unguarded, and you can go in and grab as much of it as you like.

This is not a new question to me. It has occurred once before. In order to make an appropriation, it must be applied in the law, or there must be some mode of ascertaining how much may be taken by the person who demands it, other than his own mere will. The Legislature cannot make a man a judge in his own cause.

In my opinion, therefore, it would better comport with our dignity and our standing in society if we would simply say that we accepted this office under a law which authorized us to receive one thousand dollars, and that the Legislature, having thought proper in its wisdom to repeal so much of the law as gave us that compensation, we now have no right to receive anything at all until the Legislature shall either re-enact the repealed law or enact some other law which will authorize us to receive another sum. I

think that would place us in a proper position.

Mr. BUCKALEW. I should like to ask the gentleman a question. I desire to inquire whether he has read the act of 1873?

Mr. J. S. BLACK. It does not make much difference whether I have read it or not; if I am right about its provisions. If I am wrong let my friend correct me. [Laughter.]

Mr. BUCKALEW. I understand he raises the question of power, and I desire to call his attention to the language of the act. It says this: "And the amount of the salaries of the members and clerks and the pay of the officers and employes thereof," that is, of the Convention, "shall be fixed by the said Constitutional Convention;" and then it provides that the money shall be paid upon warrant. It is not a mere case of an appropriation of \$500,000 to the expenses of the Convention in general terms, without further provision. The statute specifically provides that the particular amount shall be fixed by this Convention; and the gentleman will find a thousand such cases on the statute book in the last few years.

Mr. J. S. BLACK. Then there are a thousand cases in which the Legislature has misbehaved itself and failed to perform its duty, and I think there are not only a thousand, but ten thousand, such cases as that; but the question is whether we shall participate in the wrong and help to do it.

Mr. BUCKALEW. The gentleman did not understand me. My point is this: That the Legislature appropriated money for a particular object, and made the common provision for the ascertainment and fixing of the amount by some authority.

Mr. J. S. BLACK. I know that well enough, but I say the Legislature cannot pass a law like that and call it an appropriation. There must be some other mode of ascertaining the amount than the mere will of the party who is to pocket the money. Suppose an act were passed to put a million of dollars at the disposal of the judges, allowing them to fix their own salaries and help themselves to as much as they chose to take out of the million. Would that be an appropriation by law? The Legislature could not do that in their own favor. If the Senate and House of Representatives would repeal all laws fixing the pay of their members, then pass a law appropriating two millions to satisfy them, and authorizing each member to take as much as he thought fit, would the

gentleman call that a valid act? Would it be valid if the appropriation of the gross sum were coupled with the provision that each separate house might determine for its own members how much they would take? The act of 1873, which the gentleman (Mr. Buckalew) has read, is not an appropriation of the half million to us, but an expression of willingness on the part of the Legislature that we should appropriate it to ourselves. I am not in favor of accepting the invitation.

I am much inclined to think that we ought not to take more than the one thousand dollars, even if we had a right to take more. We have not performed our duties with such diligence and industry or attended upon the business of the Convention with such assiduity as to give us a fair claim to extra compensation. [Laughter.]

MR. KAINE. The gentleman alludes to himself, I suppose. [Laughter.]

MR. J. S. BLACK. Certainly. I said *we*, and of course I alluded to myself and others like myself.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment, offered by the gentleman from Allegheny (Mr. Guthrie.)

MR. COCHRAN. I ask for the reading of it.

The CLERK read as follows:

"That the maximum salary of delegates to this Convention shall be \$2,500, and the minimum salary shall be \$1,000; that each member may draw the one or the other sum, as his conscience shall dictate; and that the President of this Convention is authorized to draw his warrant on the State Treasurer for such amount.

MR. COCHRAN. Mr. Chairman:—

SEVERAL DELEGATES. Question! Question!

The PRESIDENT *pro tem*. It is not in the power of the Chair to put a gentleman down.

MR. COCHRAN. I am very sorry that gentlemen think it worth while to put me down, for I do not intend to occupy as much time as they have taken in calling for the question. I merely wish to say this: I hope this amendment will be voted down. The next in order will be the amendment of the gentleman from Lehigh (Mr. Ainey.) In the form in which that amendment is placed I said before that I could not vote for it. I have changed my mind on that subject since I called for the yeas and nays. That is all I wish to say.

On the question of agreeing to the amendment of Mr. Guthrie, the yeas and nays were required by Mr. Guthrie and Mr. Baer, and were as follow, viz:

YEAS.

Messrs. Achenbach, Baer, Bailly, (Perry,) Barclay, Bartholomew, Beebe, Brown, Church, Corson, Curry, De France, Edwards, Guthrie, MacConnell, M'ulloch, M'Murray, Mott, Palmer, G. W., Patton, Pughe, Smith, Wm. H., Stewart, Van Reed and Walker—24.

NAYS.

Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bigler, Black, Charles A., Black, J. S., Bowman, Brodhead, Broomall, Buckalew, Campbell, Carey, Carter, Cassidy, Clark, Cochran, Collins, Corbett, Cronmiller, Davis, Elliott, Ellis, Fulton, Gibson, Gilpin, Gowen, Hanna, Hay, Hazzard, Hemphill, Heverin, Horton, Kaine, Lamberton, Landis, Lawrence, Lear, Lilly, Littleton, M'CLean, Mann, Mantor, Mitchell, Newlin, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. E., Porter, Purviance, Samuel A., Read, John R., Reynolds, Rooke, Ross, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stanton, Struthers, Temple, Wetherill, J. M., Wetherill, John Price, Wherry, White, David N., White, Harry, White, J. W. F., Worrell and Wright—74.

So the question was determined in the negative.

ABSENT.—Messrs. Alricks, Armstrong, Bailey, (Huntingdon,) Biddle, Boyd, Craig, Curtin, Cuyler, Dallas, Darlington, Dodd, Dunning, Ewing, Fell, Finney, Funck, Green, Hall, Harvey, Howard, Hunsicker, Knight, Long, MacVeagh, M'Camant, Metzger, Minor, Purman, Purviance, John N., Reed, Andrew, Runk, Turrell, Woodward and Meredith, President—34.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Lehigh (Mr. Ainey.)

MR. STRUTHERS. I was so unfortunate as not to be able to agree in all respects with the committee and I intended to submit in the shape of a minority report my reasons to some extent. I now however, sir, will offer an amendment as a substitute for the resolution reported by the committee and the amendment now pending:

"That the compensation of members of this Convention shall be ten dollars per

day and two mileages, and that the President be authorized to draw in favor of the members accordingly."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Warren.

Mr. STRUTHERS. Mr. President: I have presented in the amendment what I intended to submit as a minority report, stating in brief the reasons for my position on that question. In the first place, by the act of Assembly the salary was fixed at one thousand dollars and the Legislature seemed to have acted in all wisdom in fixing it at that price. They fixed it at the same rate that was allow to each member of the Legislature for a legislative session, one thousand dollars. They had reason to believe, and I think very good reason, as I supposed before I accepted a nomination at any rate, that it would not keep us more than the ordinary time of a legislative session, about one hundred days; but we find, sir, now, that we have run to about twice that amount of time already, and we do not yet see the end.

The reasons why I was opposed to making the report on this subject at present and asked the committee to defer it for a time, were that we could not yet see the end. It appeared to me that we had better have postponed the report fixing the amount for a while, allowing something to be drawn on account of each, if required or desired by members, and let it pass until we could see the time of our adjournment. Then we could have some fixed data upon which to base a reasonable, a fair and equitable adjustment of the price which ought to be paid. Inasmuch, however, as it has come up in this shape—and I am very sorry that a discussion of this kind has occurred on the subject—I have looked at it in this way: One hundred days, which is estimated as the length of a legislative session, at ten dollars per day would make one thousand dollars. Looking over for some years past I find that is about the average pay of members of the Legislature, ten dollars a day.

It is very evident that the Legislature intended to put us on a par in regard to compensation with themselves. When they found our labors were running beyond the time expected, they relieved us from that by repealing the act of Assembly fixing the compensation; and my opinion is it would be very fair and proper for us to follow the lead of the Legislature, adopting the reason that governed them in fixing the price, and I, therefore, have

introduced this resolution for \$10 00 a day. Let it be estimated and it will make it about as nearly a just compensation as we can get at.

Mr. HARRY WHITE. Do you mean \$10 00 for each actual day's session?

Mr. STRUTHERS. No, to cover all the time from the commencement.

Mr. HARRY WHITE, and others. Then you ought to say so in your amendment.

Mr. STRUTHERS. My intention and expectation was that this would run over the whole time of our session, \$10 00 a day. I think now as we do not know how long we are to remain here, we cannot see the end, we have not got through in committee of the whole yet, and we have all this work to go through on second reading and third reading, and we are now here for over six months, and it appears to me we have no other data, no reasonable ground of probability, upon which we can place a determination at the present time of the compensation we ought to have, and can only adopt the *per diem* principle or let the subject go over.

Mr. CURRY. Mr. President: I regret very much that this subject has brought up as much discussion as it has. I am sure I would not have opened my mouth in favor of my report had it not been that one of my colleagues on the committee has made a minority report, which necessitates my saying a word on this question. I will say on behalf of the committee of which I had the honor to be chairman that we acted conscientiously; examined the existing and repealed statutes on the subject. We took into consideration every suggestion as to amount, and agreed to report a sum which was neither the highest nor the lowest, but one we thought was just. So far as the compensation is concerned, I am quite sure that two-thirds of the delegates in this Convention could make more at home, not only in the practice of law but otherwise, inside of one month than we have here proposed to give for the service of more than six months. I think I might with safety say that many members of the Convention could, at home in their business, have made more than the report calls for since the Convention has been organized. I am sure that our constituency will not say that it is extravagant, but that it is just, because the people of Pennsylvania are not narrow-minded men, but men always willing to do right with their public servants.

I claim this liberal principle at least for the district I have the honor to represent. I am quite sure that they will not say that



we have been plundering the State Treasury, that we have been playing the grab game, but that we have been simply taking a fair compensation, which is not too much, nor too little, in case we can close our labors inside of sixty days; but if we cannot do that it will not pay the expenses of the members of the Convention.

Therefore I shall vote against the minority report, because our constituents would say, if we adopted it, that we were prolonging the session of the Convention because we were getting \$10 00 a day.

Mr. BROOMALL. I oppose the report of the committee because it proposes to pay to men who have not been five days in attendance here the same compensation that it proposes to those who have been here regularly. I am opposed to it because it makes no provision for an equitable adjustment of salary in case of resignation and filling vacancies.

I therefore move that the report and resolution be re-committed, with instructions to report some equitable plan by which delegates will be paid according to actual time of service, except in cases of absence on account of sickness of themselves or families, and by which the salary will be properly apportioned in cases of resignation and filling vacancies.

The PRESIDENT *pro tem.* The question is on the motion to re-commit.

Mr. BROOMALL. Now, sir, I call for the yeas and nays.

Mr. S. A. PURVIANCE. I second the call.

The vote was taken *viva voce* and the motion declared rejected.

Mr. BROOMALL. What became of my call for the yeas and nays?

The PRESIDENT *pro tem.* The question is decided.

Mr. AINEY. Your call was not seconded.

Mr. BEEBE. I seconded it.

Mr. BROOMALL. It was seconded by the gentleman on my right (Mr. S. A. Purviance) also.

The PRESIDENT *pro tem.* The Chair did not hear them and he has decided the question. The question is upon the amendment of the gentleman from Erie (Mr. Struthers.)

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the amendment offered by the gentleman from Lehigh (Mr. Ainey.)

Mr. BROOMALL. Then I make the motion to re-commit now, and on that motion call for the yeas and nays.

Mr. STANTON. That has been voted down.

The PRESIDENT *pro tem.* The question is upon the amendment of the gentleman from Lehigh.

Mr. BROOMALL. Other business has intervened since the motion to recommit was made, and I now renew it.

The PRESIDENT *pro tem.* The Chair cannot entertain the motion.

Mr. BROOMALL. Other business has intervened and the motion is in order.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Lehigh (Mr. Ainey.)

Mr. AINEY. In order that no further delay may be had on this subject, and as this is to test the sense of the House, I call the yeas and nays.

Mr. HEMPHILL. I second the call.

The yeas and nays having been required, were as follow, viz:

#### YEAS.

Messrs. Ainey, Bailly, (Perry,) Bannan, Bigler, Brodhead, Broomall, Cochran, Dallas, Fulton, Gilpin, Gowen, Hemphill, Knight, Lilly, Littleton, Patterson, D. W., Purviance, Samuel A., Reynolds, Rooke, Ross, Smith, H. G., Smith, Henry W., Wetherill, J. M., Wetherill, John Price and White, Harry—25.

#### NAYS.

Messrs. Achenbach, Addicks, Andrews, Baer, Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, Charles A., Black, J. S., Bowman, Brown, Buckalew, Campbell, Carey, Carter, Cassidy, Church, Clark, Collins, Corbett, Corson, Cronmiller, Curry, Davis, De France, Dunning, Edwards, Elliott, Ellis, Fell, Gibson, Guthrie, Hanna, Hay, Hazzard, Heverin, Horton, Kaine, Lamberton, Landis, Lawrence, Lear, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Pughe, Read, John R., Reed, Andrew, Russell, Sharpe, Simpson, Smith, William H., Stanton, Stewart, Struthers, Temple, Van Reed, Walker, Wherry, White, David N., White, J. W. F., Worrell and Wright—78.

So the amendment was rejected.

ABSENT.—Messrs. Alricks, Armstrong, Biddle, Boyd, Craig, Curtin, Cuyler, Darlington, Dodd, Ewing, Finney, Funck, Green, Hall, Harvey, Howard, Hunsicker, Long, MacVeagh, M'Camant, Metzger, Minor, Nowlin, Purman, Purviance, John

N., Runk, Turrell, Woodward and Meredith, *President*—29.

The *PRESIDENT pro tem.* The question recurs on the original resolution.

Mr. LEAR. I move to amend the original resolution by striking out "\$2,500" and inserting "\$1,000."

The *PRESIDENT pro tem.* That amendment is before the Convention.

Mr. H. W. SMITH. I call for the yeas and nays.

Mr. LEAR. I second the call.

Mr. C. A. BLACK. Mr. President: I do not intend to detain the Convention, as delegates are somewhat clamorous for a vote. I only wish to give a reason why I shall vote against this amendment. I agree with my friend from Columbia, (Mr. Buckalew,) that this Convention has full and entire power over this question. The Legislature gave us abundant authority to fix our own salaries, and it is our duty to do it. I also think we ought to do it now; otherwise we will be troubled with it time and again hereafter. But in my opinion \$1,000 is too small, as the session has already been extended far beyond all reasonable limits. At the same time I think \$2,500 is too large. I would vote for \$1,500, and I would vote for \$2,000, but I think that \$2,500 is too large.

This, however, is only my opinion. I do not say it to influence other delegates, but I think it is unreasonable and unjust to gentlemen, especially from distant parts of the State, to come here for a thousand dollars, and the session already protracted to six months. The amount, therefore, in my opinion, is too small, and I shall vote against it; and at the same time I think \$2,500 is rather steep, and I would prefer it at \$1,500, or, at farthest, \$2,000. I only say this in explanation of my own vote; and I think that we should now fix it at the proper amount, and thus get that disturbing element out of the way of a more rapid progress of the business of the Convention.

Mr. LILLY. I am in favor of sending this subject back to the Legislature and taking the \$1,000 they first voted us. I think we should send it back to them to fix a greater salary; a salary sufficient to pay members for the time they spend here. I know many cannot afford to come here for \$1,000, and they cannot recover themselves for years to come. Consequently, as the matter of fixing the salaries is now forced upon us by the amendment, if the gentleman in front desires to fix it at \$1,000, I have only to say that I

shall vote for the report of the committee on that account.

The *PRESIDENT pro tem.* The Chair is compelled to state to the delegate from Carbon that when the yeas and nays have been called debate is not in order. ["Question." "Question."]

Mr. LILLY. I only desire to say one word further — ["Question." "Question."]

The *PRESIDENT pro tem.* The yeas and nays have been called and the Clerk will call the roll.

On the amendment of Mr. Lear the yeas and nays were taken, and were as follow, viz:

#### YEAS.

Messrs. Ainey, Baily, (Perry,) Bannan, Brodhead, Broomall, Dallas, Fulton, Gilpin, Gowen, Knight, Lear, Littleton, M'Clean, Newlin, Palmer, H. W., Reynolds, Rooke, Ross, Smith, H. G., Smith, Henry W., Wetherill, J. M., Wetherill, John Price and White, Harry—23.

#### NAYS.

Messrs. Achenbach, Addicks, Andrews, Baer, Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Beebe, Bigler, Black, Charles A., Black, J. S., Bowman, Brown, Buckalew, Campbell, Carter, Cassidy, Church, Clark, Cochran, Collins, Corbett, Corson, Cronmiller, Curry, Davis, De France, Dunning, Edwards, Elliott, Ellis, Gibson, Guthrie, Hanna, Hay, Hazard, Hemphill, Heverin, Horton, Kaine, Lamberton, Landis, Lawrence, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purviance, Sam'l A., Read, John R., Reed, Andrew, Russell, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Struthers, Temple, Van Read, Walker, Wherry, White, David N., White, J. W. F., Worrall and Wright—78.

So the amendment was rejected.

ABSENT.—Messrs. Alricks, Armstrong, Bardsley, Biddle, Boyd, Carey, Craig, Curtin, Cuyler, Darlington, Dodd, Ewing, Fell, Finney, Funck, Green, Hall, Harvey, Howard, Hunsicker, Long, MacVeagh, M'Camant, Metzger, Minor, Purman, Purviance, John N., Runk, Turrell, Woodward and Meredith, *President*—31.

Before the result was announced:

Mr. CASSIDY. I desire to call the attention of the President to the fact that a number of delegates who were present did not vote. Therefore, I ask for a call of the list of absentees, under the rules.

The absentees were called.

Mr. BAER. Before the vote is announced I wish to ask whether this House can compel members who are in the House to vote. If there is such a rule, I ask it to be enforced.

The PRESIDENT *pro tem.* There is no such rule.

The result was announced as above stated.

The PRESIDENT *pro tem.* The question recurs on the original resolution.

Mr. HEMPHILL. I offer the following amendment: Strike out all after the word "resolved," and insert:

"That the subject of the compensation of the members of this Convention be referred to the next Legislature."

The amendment was rejected.

Mr. W. H. SMITH. I appeal to the minority. Amendments have been offered the same in substance three times and been voted down by a vote of three to one, and gentlemen should not interfere further with the progress of the deliberations here by offering such amendments over and over again.

Mr. GOWEN. I move to amend by striking out all after the word "resolved," and inserting:

"That the compensation of members of this Convention for the entire session shall be as follows:

"First. For those members who reside in the city of Philadelphia, \$500.

"Second. For such members as do not reside in Philadelphia, \$1,000.

"And that under no circumstances whatever shall any member receive any greater compensation than that above named."

Mr. SIMPSON. It is evidently the intention of some few of the members of this Convention to fritter away the whole day upon this question. The majority is decisive and we may as well come to a determination upon it at once, and I therefore call for the previous question, to have this thing disposed of. ["No!" "No!"]

The PRESIDENT *pro tem.* Is the call for the previous question seconded? ["No!" "No!"] It is not seconded, and the question is on the amendment offered by the gentleman from Philadelphia (Mr. Gowen.)

The amendment was rejected.

Mr. J. S. BLACK. I offer the following amendment: Strike out all after the word "resolved" in the original resolution and insert:

"That the members of this Convention have no power to fix their own salaries, and the Legislature cannot delegate such

power. The law fixing the salary at \$1,000 being repealed, the members are entitled to no salary until the General Assembly shall see proper to re-enact the same law or some other on the same subject."

The PRESIDENT *pro tem.* The question is on the amendment.

The amendment was rejected.

The PRESIDENT *pro tem.* The yeas and nays have been called and seconded on the original resolution.

Mr. BUCKALEW. I beg leave to say that I rose three or four times and addressed the Chair, while the Chair has recognized others.

The PRESIDENT *pro tem.* So many delegates rise simply for the purpose of getting up that it is impossible for the Chair to distinguish when a gentleman rises for the purpose of addressing the Convention. The delegate from Columbia will proceed.

Mr. BUCKALEW. I desire before this subject passes away to get myself right upon the record; and for this purpose I desire to submit a motion of amendment which has not been made and will indicate exactly my position. I move to strike out the words "\$2,500" and insert "\$2,000." I do it for the purpose of keeping the expenses of this Convention within the appropriation made by the Legislature.

The PRESIDENT *pro tem.* The amendment of the gentleman from Columbia is before the Convention.

Mr. COCHRAN. I move to amend the amendment by striking out "\$2,000" and inserting "\$1,500."

The PRESIDENT *pro tem.* The question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the amendment of the gentleman from Columbia, (Mr. Buckalew,) to strike out "\$2,500" and insert "\$2,000."

The yeas and nays were required by Mr. Bartholomew and Mr. Buckalew and were as follow, viz.:

YEAS.

Messrs. Bally, (Perry,) Bailey, (Huntingdon,) Bartholomew, Beebe, Bigler, Black, Charles A., Broomall, Brown, Buckalew, Carter, Clark, Cochran, Cronmiller, Dallas, Dodd, Ellis, Fell, Gibson, Kaine, Lamberton, Landis, Lawrence, M'Murray, Mantor, Patterson, T. H. B., Porter, Purviance, Sam'l A., Read, John

R., Reed, Andrew, Reynolds, Russell, Sharpe, Smith, H. G., Struthers, Walker, White, David N., White, Harry, and Wright—38.

#### N A Y S.

Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Barclay, Black, J. S., Bowman, Brodhead, Campbell, Cassidy, Church, Collins, Corbett, Corson, Curry, Davis, De France, Dunning, Edwards, Elliott, Fulton, Gilpin, Gowen, Guthrie, Hanna, Hay, Hazzard, Hemphill, Heverin, Horton, Lear, Lilly, Littleton, MacConnell, M'Clellan, M'Culloch, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patterson, D. W., Patton, Pughe, Rooke, Ross, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, J. W. F. and Worrell—61.

So the amendment was rejected.

ABSENT.—Messrs. Alricks, Armstrong, Baer, Bannan, Bardsley, Biddle, Boyd, Carey, Craig, Curtin, Cuyler, Darlington, Ewing, Finney, Funck, Green, Hall, Harvey, Howard, Hunsicker, Knight, Long, MacVeagh, M'Camant, Mann, Metzger, Minor, Newlin, Palmer, H. W., Purman, Purviance, John N., Runk, Turrell, Woodward and Meredith, *President*—33.

The *PRESIDENT pro tem.* The question now recurs on the original resolution.

Mr. STRUTHERS. I desire to submit at this time, as a member of the committee, a minority report on this subject.

The *PRESIDENT pro tem.* The minority report, though out of order somewhat, will be read.

Mr. STRUTHERS. I do not ask that it be read, but that it be placed on the Journal.

The *PRESIDENT pro tem.* If there be no objection, it will be entered on the Journal.

The minority report is as follows:

The undersigned, member of the special committee to whom was referred the subject of fixing the pay of the members and officers of this Convention, as a minority report begs leave to submit: That in his opinion, it is premature to act definitely on that subject at the present time. The consideration of reports of standing committees in committee of the whole is not yet closed, and will not be for some time; after which all will have to be considered on second reading and third reading, which will occupy time, which we cannot now compute or closely estimate; we therefore have not now the data

upon which to base a fair and just estimate of the proper amount to be charged as compensation. For these reasons I object to the report of the majority fixing the round sum of \$2,500 at this time as pay for the term. And in accordance with the rule of compensation of members of the Legislature, which I understand gives the members each about \$10 per day, I would recommend that it would be more judicious to make the pay of the members of this Convention \$10 per day.

#### T. STRUTHERS.

The *PRESIDENT pro tem.* The question now is on the adoption of the original resolution reported by the committee.

The yeas and nays were required by Mr. Cochran and Mr. Hemphill and were as follow, viz.:

#### Y E A S.

Messrs. Achenbach, Addicks, Andrews, Baer, Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Beebe, Bowman, Brown, Cassidy, Church, Collins, Corbett, Corson, Cronmiller, Curry, Dallas, Davis, De France, Dodd, Dunning, Edwards, Elliott, Ellis, Fell, Gibson, Guthrie, Hanna, Hazzard, Heverin, Horton, Landis, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Mitchell, Mott, Niles, Palmer, G. W., Parsons, Patton, Pughe, Read, John R., Reed, Andrew, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Van Reed, Walker, Wherry, White, David N. and Wright—60.

#### N A Y S.

Messrs. Ainey, Bailly, (Perry,) Bannan, Bardsley, Bigler, Black, Charles A., Black, J. S., Brodhead, Broomall, Buckalew, Campbell, Carter, Clark, Cochran, Fulton, Gilpin, Gowen, Hay, Hemphill, Kaine, Knight, Lamberton, Lawrence, Lear, Littleton, M'Clellan, Newlin, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Sam'l A., Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Henry W., Struthers, Wetherill J. M., Wetherill, Jno. Price, White, Harry, White, J. W. F. and Worrell—44.

ABSENT.—Messrs. Alricks, Armstrong, Biddle, Boyd, Carey, Craig, Curtin, Cuyler, Darlington, Ewing, Finney, Funck, Green, Hall, Harvey, Howard, Hunsicker, Long, MacVeagh, M'Camant, Metzger, Minor, Purman, Purviance, John N., Runk, Turrell, Woodward and Meredith, *President*—28.

Mr. HAY. I vote "nay" on this resolution, because it contains matters upon

which I think the committee should have made no report, and which this Convention has no control over. I do not, however, desire to be understood as voting that the salary reported by the committee is an improper one. That is not my opinion.

MR. GUTHRIE. I move to reconsider the vote by which the resolution was adopted, and to lay that motion on the table.

The PRESIDENT *pro tem*. The question is on the motion of the gentleman from Allegheny (Mr. Guthrie.)

The motion was not agreed to.

#### DECLARATION OF RIGHTS.

MR. STANTON. I move that the Convention go into committee of the whole on the Bill of Rights.

The motion was agreed to, and the Convention accordingly resolved itself into committee of the whole, Mr. Bigler in the chair, on the article reported by the Committee on the Declaration of Rights.

The CHAIRMAN. The committee of the whole have had referred to them article No. 18. When the committee rose the question was on the amendment of the member from the city (Mr. Dallas) to section 7.

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

The CLERK. The amendment is to strike out the seventh, eighth and ninth lines, and down to the word "evidence" in the tenth line of the seventh section, and to insert as follows:

"All papers relating to the conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, shall be privileged, and no recovery or conviction shall be had or sustained in any suit or prosecution, civil or criminal, for the publication thereof, except where such paper shall have been maliciously published, and malice shall not be presumed from the fact of publication."

MR. H. G. SMITH. Mr. Chairman: The question under discussion is one which has necessarily engaged more or less of my attention. It is one upon which much has been said, and I ask the indulgence of the committee if I consume upon it more time than the rule limits me to.

The law upon which every criminal prosecution for libel is brought in Pennsylvania is a relic of those rude days in England when almost every man carried a sword or a dagger. Then human life was

held in cheap estimation, and bloody brawls were of constant occurrence. A majority of the gentlemen who were so ready to wipe out in blood the slightest imputation which might be cast upon their honor could not write their own names, and were compelled to make their marks. In their estimation a knowledge of penmanship was only needed by clerks and priests, and they regarded printing as one of the black arts. The consequence was that whatever appeared in written or printed form assumed an air of extraordinary importance and a solemnity not attached to spoken words. If an opprobrious epithet called for instant revenge, when uttered in a brawl over their cups, still more was it supposed to do so when committed to writing, or circulated in printed characters. In those days it was common for one man who sought a quarrel with another to employ a clerk to write down certain charges, and these were posted over the accuser's own signature in some public place. This was a challenge which no one who affected to be a gentleman could afford to disregard, and a hostile meeting was the inevitable consequence. To repress this habit and to preserve the public peace, libel laws were called into existence, and, inasmuch as allusion to some indiscretion or disgraceful passage in a man's life was more apt to arouse him to vengeance than a falsehood, the publication of any truth calculated to produce a breach of the peace came to be regarded as the most dangerous form of libel. Hence the maxim of the old English law, which has not yet become quite obsolete in Pennsylvania, "The greater the truth the greater the libel."

But times have changed, and laws and customs change with them. Burke has said "the days of chivalry are past," and Benton, in referring to the duel between Clay and Randolph, speaks of it as the last high-toned affair of the kind in this country, and questions seriously whether the old order of things, when an insult was atoned for according to the code of honor, was not better than that which calls us to witness the most disgraceful squabbles in our public bodies. The gentlemen of our day do not wear swords at their sides; we only see them on the stage when the manners of a past age are mimicked, and we have stringent enactments against the carrying of deadly weapons. Everybody reads and writes in these days of common schools, and there is infinitely less danger

of a breach of the peace to be apprehended from a printed or written attack upon a man's character now than from words spoken when two angry men stand face to face. The theory upon which the action for libel rests, as provided for in the common law of England, has been worn out in the course of the revolving centuries, and the old fictions which hedged it about only remain as a useless lot of illogical trumpery upon the books which they encumber. Still, dead as these fictions are, cunning lawyers and vindictive judges manage to make newspaper publishers feel the sharp points of the thorns which adhere to the decaying trunk of a plant that has long been destitute of vitality.

The libel law of England had been brought to the perfection of its irrationality before the newspaper press had fairly come into existence, and, from the first, publishers were made to feel the rigor of its iron rule. A jealous and tyrannical government exercised the strictest censorship over all such, and no paper was allowed to issue without express warrant from the public authorities. For many years newspaper publishers did not dare to express any opinion upon the conduct of public affairs, and for allusions of the most innocent character they were subjected to the severest pains and penalties. They were dragged through the streets to Tyburne and their papers were burned by the common hangman. Prynne had his ears cut off, and Defoe was set in the pillory to be mocked at by the rabble. But the best and boldest intellects of England, the truest and most earnest lovers of liberty, the men who were most fully imbued with the free principles upon which rests all that is good in the British government, soon saw that freedom of the press was absolutely essential to the freedom of the subject. Then the war against the absurd law of libel began, and it has been carried on until the English press occupies a more independent position to-day than does that of Pennsylvania. The causes which led to the passage of Fox's libel act, the act of 32d, George III, which made the jury judges of the law as well as the fact, are matters of history. Erskine, by his intrepid and persistent defence of the Dean of St. Asaph, contributed more than any man save Lord Camden to gain that security for the British press, which, according to Lord Campbell, in effect defines a libel to be "*a publication which in the opinion of twelve independent and intelligent men is mischievous, and such as*

*ought to be punished.*" First came the act which gave the jury the right to determine both the law and the facts, and that was followed by decisions and enactments until the act of 6th and 7th Victoria placed the newspaper press of England in a proper position. Under the provisions of that act any publisher is allowed, when called to answer to a charge of libel, to put in the following plea, and I read it here for the benefit of the one hundred lawyers in this Convention :

*"In the Central Criminal Court, or at the Assizes of our Lady the Queen, holden at —, in and for the county of —, or (in case of information) in the Queen's Bench.*

The — day of —, A. D. —.  
The QUEEN } And now the said A. B., by  
vs. } C. D., his attorney, (or in his  
A. B. } own proper person,) comes into court, and having heard the said indictment (or information) read, says that the alleged defamatory libel and matters charged against him, the said A. B., in and by the said indictment (or information) as written and published by him, the said A. B., of and concerning the said E. F., are true in this : That, &c., (stating concisely the facts relied on as justifying the libel on the grounds of its truth.) And the said A. B. further saith that it was for the public benefit that the said alleged defamatory libel and matters charged in and by the said indictment (or information) as written and published of and concerning the said E. F., should be written and published, because, &c., (stating the fact or facts relied on as excusing the publication on the ground of benefit to the public,) whereby, and by reason whereof, it was and is for the public benefit that all and every the said alleged defamatory libel and matters charged in the said indictment (or information) should be published."

Under that broad shield the English publisher rests safe in his liberty and secure in all his rights. He can give to the jury all the facts which go to show that the matter complained of is true and proper for public information, and if he succeeds in so doing, he stands acquitted before the law. That is all the newspaper press of Pennsylvania requires; all the multitude of publishers within the bounds of this Commonwealth demand.

Our ancestors brought the common law of England with them to this country, and a grand system of jurisprudence it is. The rules which at first prevailed in re-

gard to libel seem to be an excrescence upon it. They have never been consistent with the perfection of reason, and Lord Mansfield said, when a libel case was before him, that he could not "upon principle make any distinction between words spoken and written, as to the right of bringing an action upon them." He admitted that the old books and abridgements made no such distinction, but felt himself bound by the decisions running through a century.

Those who came from England to rule over our ancestors in the provinces brought with them not only all the absurdities of the libel law, but a disposition to enforce its most rigorous provisions. The consequence was that the battle for freedom of the press had to be fought in this country just as it had to be fought in England. The first newspaper started in Virginia was suppressed by a Colonial Governor. In 1690 Benjamin Harris started a newspaper in Boston, but the first issue drew down upon him the ire of the authorities, and it was spoken of by the Colonial Legislature as a pamphlet which, "coming out without authority, contained reflections of a very high character;" and the publisher was forbidden "to print anything without license first obtained from those appointed by the Government to grant the same."

The first paper published in Pennsylvania and the third in America was issued in Philadelphia on the 22d of December, 1719, by Andrew Bradford, and was styled "*The Weekly American Mercury*." Mr. Bradford was postmaster of the city at that time, and no doubt disposed to conciliate the favor of those to whom he owed his appointment. On January 2d, 1721, the following paragraph appeared in the *Mercury*:

"Our General Assembly are now sitting, and we have great expectations from them at this juncture that they will find some efficient remedy to revive the dying credit of the province, and restore us to our former happy circumstances."

How very modest that seems! Yet we find that the editor and publisher was summoned to answer for it before the Provincial Council. Upon being arraigned he pleaded that the paragraph was written by a journeyman printer and inserted without his knowledge, and he humbly expressed his regrets, whereupon he was let off with a reprimand and a warning "*never to publish anything more relating to the affairs of any of the colonies.*" How

sweeping is the sound of that prohibitory command, even as it comes to our ears through the lapse of a century and a half! But the publisher of the first Pennsylvania newspaper had to pass through a severer ordeal. Benjamin Franklin wrote over the signature of "Busy Body" a series of articles for the *Mercury*, and in one of them, near a municipal election, the following remarks were made:

"To the friends of liberty firmness of mind and public spirit are absolutely requisite; and this quality, so essential and necessary to a noble mind, proceeds from a just way of thinking that we are not born for ourselves alone, nor for our own private advantage alone, but likewise and principally for the good of others and the service of civil society. This raised the genius of the Romans, improved their virtue, and made them protectors of mankind. This principle, according to the motto of these papers, animated the Romans—Cato and his followers—and it was impossible to be thought great or good without being a patriot; and none could pretend to courage, gallantry, and greatness of mind, without being first of all possessed with a public spirit and love of country."

It would perhaps puzzle even the present astute district attorney of Philadelphia to discover anything libellous in that paragraph, yet Mr. Bradford was again summoned before the Colonial Council to answer. To his credit be it said that he showed some spirit this time, and for so doing found himself bound over and committed to prison. He was soon released, however, and there the matter ended.

The first action for newspaper libel ever brought on this continent was entered against J. Peter Zenger in the city of New York, and he was arrested on the 17th day of November, 1734, that day being the Sabbath. The prosecutor was the President of the Colonial Council of New York, and acting Governor of the Province. Zenger, who published a paper called the *New York Weekly Journal*, had indulged in some strictures which were entirely proper, but which did not quite suit the taste of those in authority. The consequence was that he was thrust into prison, and his papers, which had been seized, were ordered to be burned by the common hangman. The mayor and magistrates of the city of New York were directed to be present at this holocaust to the freedom of the press, but the spirit of liberty was

beginning to stir in the bosoms of the colonists, and the city authorities refused to countenance the conduct of the Governor. The imprisoned editor had the sympathy of the public, and his friends employed Andrew Hamilton, Esq., the most eminent lawyer of his day in Philadelphia, for the defence.

This case created the most intense interest throughout all the provinces. Men whose hearts were imbued with the spirit of liberty, and who foresaw with prophetic gaze the mighty struggle in which they were soon called to engage had learned to value aright the freedom of the newspaper press. In speaking of the result of this trial Governor Morris declared it to be "*the dawn of that liberty which afterwards revolutionized America.*" When Zenger was arraigned the court room was crowded with the friends of liberty, and anxiety mingled with hope was depicted upon every earnest countenance. The unexpected appearance of Andrew Hamilton beside the accused enhanced the excitement of the occasion. The publication of the article was admitted, and Mr. Hamilton offered to prove the truth of the statements as published. This had been allowed by Pemberton in England in an analogous case, but there, as is now the case in Pennsylvania, large discretionary power was assumed by the judges, and what Pemberton had wisely granted and Holt had offered to allow upon sound principles of law, had been denied by another English judge, when Benjamin Franklin was arraigned on a charge of libel. Interest and passion overruled the intent of the law in New York then, as it sometimes does in Pennsylvania to-day, and the judge who held his office at the will of the authorities then in being refused to allow the truth to be given in evidence.

The CHAIRMAN. The gentleman from Lancaster will give way for a moment. The Chair is compelled to remind him that his time has expired.

Mr. SIMPSON. I move that his time be extended.

The CHAIRMAN. It is moved and seconded that the time of the gentleman from Lancaster be extended. Is it the sense of the committee that he should be allowed to proceed? ["Aye!" "Aye!" "Aye!"] The Chair hears no objection, and the motion is agreed to. The gentleman from Lancaster will proceed.

Mr. H. G. SMITH. I thank the committee of the whole for its courtesy, and will try to be brief.

The right of proving the truth of the matter published having been thus peremptorily denied, Mr. Hamilton was compelled to go to the jury without any testimony upon which to base a defence. He was a bold, fearless and patriotic man, fully imbued with the importance of establishing and perpetuating the freedom of the press. Starting out with the declaration that the suppressing of evidence ought to be regarded as the strongest evidence in such cases, he made a speech of so great power and eloquence that it stands to-day, imperfectly reported though it was, as one of the finest efforts of forensic oratory to be found in the English language. In vain did the Attorney General bid him have a care as to what he said. He was not to be intimidated or deterred from the discharge of his duty. With unanswerable arguments, with noble words, with scathing satire, with all the arts of a most accomplished advocate, he appealed to the jury and compelled a verdict of *not guilty*. The effect upon the audience was electrical. Cheers shook the walls of the court room when the righteous verdict was announced. Mr. Hamilton was carried on the shoulders of his admirers to a handsome entertainment, and the common council presented him with the freedom of the city in a golden box, appropriately inscribed, which may, perhaps, still be found in the hands of some of his family connections in this city.

It is gratifying to know that it was a Pennsylvania lawyer, a Philadelphia lawyer if you please, who first compelled a recognition of the right of the press to freedom on this continent; and I am glad to see that Philadelphia lawyers of to-day are not forgetful of the proud traditions of a glorious past. The amendment now under consideration was presented by a gentleman (Mr. Dallas,) who can trace his ancestry back through a line of Philadelphia lawyers who have been distinguished for patriotism and talent. The able argument made by him yesterday in support of his amendment was based upon a proper view of the subject. What the publishers of Pennsylvania complain of, and what they have a right to complain of, is the uncertainty of the law under which they are held to answer. The Convention which met in 1776 had advanced far enough beyond the prejudices engendered by the old English law of libel to recog-



nize as a principle the necessity of a free press in a free government, and a general declaration is to be found in the Constitution then adopted, which reads as follows: "That the people have a right to freedom of speech and of writing and publishing their sentiments; therefore the freedom of the press ought not to be restrained."

The framers of the Constitution of 1790 were prepared to go as far as the English law had then advanced, and they framed the section which it is now proposed to amend. The intention of the framers of that clause was unquestionably right. They were able men of upright lives and true lovers of liberty. But the language of the section is ambiguous. Lawyers and judges of to-day do not agree as to the meaning of it. It has been held that members of the State Legislature are not "officers" within the meaning of this section, and the words "men in public capacity" have been restricted to a very narrow interpretation. The clause, "or when the matter is proper for public information" has given rise to unlimited comment. Some hold it to be broad enough to cover any matter which a jury may believe to be proper for public information, and with such an interpretation in general use the press would have comparatively little reason to complain; but the general opinion of lawyers is adverse to such an understanding of the language, while not a few regard it as merely supplementary to the clause relating to officers and men in public capacity and applicable to them alone. When matter published has been admitted to be proper for public information judges have undertaken to deny the right to give the truth in evidence. In the case of C. Cathcart Taylor, recently tried in this city, the defendant was informed that he might proceed to prove the exact truth of the words as published, but that he would not be allowed to lay the whole truth in reference to the publication before the jury. The hardship of such an interpretation of the fundamental law can be seen at a glance. It is a mere mockery of justice, an observance of the forms of a law intended to protect in a manner which completely takes away the benefits intended to be conferred by the protectory provision.

The statutory definition of libel in Pennsylvania is also vague and ambiguous. In fact no satisfactory definition of libel seems ever to have been given.

Lord Lyndhurst, in his evidence before the committee of the House of Lords,

on whose report the act of 6th and 7th Victoria was framed, says on this subject: "A definition, in order to satisfy the requisites of a good, logical definition, ought not only to be sufficiently precise, so that it shall take in nothing except what was intended to be specified, but also sufficiently comprehensive to omit nothing which ought to be included. I have never yet seen, or been able myself to hit upon anything like a definition of libel which possesses those requisites of a definition, and I cannot help thinking that the difficulty is not accidental, but essentially inherent in the nature of the subject matter."

Of what little utility for the purpose of conveying any precise knowledge of a practical character a definition must be which attempts to describe at once all kinds of libels, may be seen from the following examples, taken from standard writers: "*Libelli Famosi*," says Blackstone, taken in their largest and most extensive sense, signify any writings, pictures or the like of an immoral or illegal tendency. That definition certainly is broad enough to take in all that ought to be included, but surely it will not be maintained that it answers the other requirement of that precision which excludes all not intended to be specified. "Considering the offence in its relation as well to the public as to individuals," says Starkie, "libels may not inconveniently or improperly be defined to be any writings, pictures or other signs which immediately tend to injure the character of an individual, or to occasion mischief to the public."

Let any intelligent lawyer mark the ambiguities in the constitutional provision and in the statutory law of this State, and then let him answer me honestly, whether publishers in Pennsylvania have not good reason to complain in regard to the uncertainty which attaches to the law of libel.

In England the law of libel in its whole scope and intent has been defined by liberal statutory provisions and firmly settled by well-considered judicial decisions. In Pennsylvania we have nothing definite or permanent. Judicial decisions in one part of the State differ from those made in another section, and in the city of Philadelphia we have seen the same judge rendering widely diverse opinions from the same bench when different newspaper publishers were arraigned before him. I advocated the election of judges

by a popular vote because I thought I saw in the appointive system greater dangers, but no one can close his eyes to the fact that partisanship may invade the halls of justice and sit in the seat of the judges. Against such dangers the press of Pennsylvania has a right to ask protection, because upon its freedom depends to a great extent the freedom of the people and the welfare of the State.

Provisions for the protection of the freedom of the press have been incorporated into the fundamental law of every State in the Union. This has been done because the people felt that it would not be safe to trust so sacred a right to the caprices and the passions which might control Legislatures. Since 1790, when the section which it is proposed to amend was adopted, the most wonderful revolution has taken place in journalism. Then newspapers were insignificant in size, and those published on this side the Atlantic were almost exclusively filled with news from Europe, at least three months old. Now the morning paper, which each member of this Convention reads at the breakfast table, contains the news of every important occurrence which took place throughout the entire civilized world the day before. The mightiest agencies of mechanism are called into requisition. The news gathered by the lightning is stamped upon the paper by steam; and nothing that capital, energy and talent can supply is left unemployed. Within a year one of the great New York dailies has discovered the lost African explorer, and has startled the reading community by printing broadsides of the freshest news from the World's Exposition at Vienna in two different languages. It is not an uncommon thing for that journal to furnish in a single issue, for half a dime, as much reading matter as there is in the Bible.

The regulations made for the press of Pennsylvania at the end of the last century can hardly be deemed suitable for this day. Other States have advanced. New York came squarely up to the demands of the times a quarter of a century ago, while Pennsylvania stood still with characteristic stubbornness. The clause contained in the New York Constitution reads as follows:

"In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends,

the party shall be acquitted; and the jury shall have the right to determine the law and the fact."

That is a wise and liberal constitutional provision, and after being tried for a quarter of a century and found to work well, it has been re-enacted. I mention this fact for the benefit of any members of this Convention who may feel the need of a staff of authority upon which to lean. It removes the ambiguities from the law of libel so far as criminal prosecutions are concerned. Sixteen States have followed the example of New York, and some of them have applied the rule to civil actions. Why should Pennsylvania continue to lag in the rear while the car of progress moves onward?

Why should not the newspaper publisher in this State be equally privileged in the publication of true matter which is proper for public information? Why should he be called to account for so doing either in a civil or a criminal court? Why, if brought into a criminal court, should he be denied the privilege of laying his whole defence before a jury of his countrymen. The horse-thief, the house-breakers and the murderer can do so; and if it were proposed to subject the worst class of criminals to the disabilities under which newspaper publishers labor in Pennsylvania, a howl of indignant execration would go up from every one of the hundred lawyers in this body so loud and fierce that it would startle the thirty-three honest men. The newspaper publishers make no exorbitant demands upon this Convention—they only ask, when brought into the criminal courts, that they may be put on a level with horse-thieves, house-breakers and murderers. I know that editors have been accused of being forward and impudent, but in making this demand I really think they may be accounted reasonably modest. They do need the protection they ask of this Convention—they need it not only that they may be privileged to make proper comments upon current events, but that they may lay before their readers the important events of the day without running the risk of being imprisoned for so doing. Undue license they do not ask, though they would not abuse it if granted. You are not asked to go very far. You are not asked to cover all the cases of hardship which may occur.

In one of his highest oratorical flights, alluding to an agency whose power has

been multiplied manifold in England since his day, Sheridan exclaimed :

"Give me but the liberty of the press, and I will give to the minister a venal House of Peers; I will give him a corrupt and servile House of Commons; I will give him full sway of the patronage of office; I will give him the whole host of ministerial influence; I will give him all the power that place can confer upon him to purchase up submission and overcome resistance; and yet, armed with the liberty of the press, I will go forth to meet him undismayed. I will attack the mighty fabric he has reared with that mightier engine. I will shake down from its height corruption, and bury it under the ruins of the abuses it was meant to shelter."

If those eloquent words were true of the press of England in the days of Sheridan, how much more truthful ought they to be in our day, when the circulation and the influence of newspapers has been increased a thousand fold. Publishers no longer hold their opinions in subordination to governmental censorship, and they are rapidly emancipating themselves from the bonds of blind and bigoted partisanship. Independence of action is becoming more and more the rule of conduct laid down by newspaper managers for their own action. The independent press of the United States is now the mightiest power in the land, but it is only a weakling when compared with what it will become when fully emancipated.

The press of Pennsylvania asks this Convention to free it from the uncertainties and the hardships imposed by a libel law which had its origin in a rude age, and which received its interpretation and derived the precedents which are still followed from the tyrannical Star Chamber Court of England.

Let that be done, and the members of this body will have the proud satisfaction of knowing that they have done much to stamp with truth the utterance of the poet, who sung in glowing words :

" Mightiest of the mighty means,  
On which the arm of progress leans,  
Man's noblest mission to advance;  
His woes assuage, his weal enhance;  
His rights enforce, his wrongs redress;  
Mightiest of the mighty is the Press."

Mr. LEAR. Mr. Chairman: I move to amend the amendment by striking out all after the sixth line of the section and inserting as follows:

"In all trials for libel, whether civil or criminal, it shall be a sufficient defence

that the publication is true and was made from good motives and for justifiable ends."

Mr. Chairman, I offer this amendment because I think it is better than the amendment of the gentleman from Philadelphia, and will give abundant liberty to the press for all legitimate purposes. The amendment of the gentleman from Philadelphia (Mr. Dallas) makes certain sorts of publications privileged matter, and it does not make any difference, according to the amendment, and according to his own remarks upon the subject, whether the publication be true or otherwise, if he make his mis-statement by a misunderstanding or in ignorance of the facts. Now I think that is allowing too much to the newspaper press or to any other kind of publication of written or printed documents. My view is that a man who is engaged in publishing a newspaper or publishing anything else should be willing to have the matter tested by the truth.

There was a time when the idea existed that the law of libel was necessary to be enforced upon the grounds upon which it was put, because any libellous publication tended to produce a breach of the peace, and all criminal prosecutions proceed upon the idea that they have a tendency to produce a breach of the peace, and all indictments for libel conclude as being against the peace of the Commonwealth of Pennsylvania. But this doctrine about the law of libel, which originated in England and which was principally practised in the court of Star Chamber, originated in a state of society which does not exist now, which never has existed, and which I hope never will exist in this country. It originated in a society which has for its types upon the one extreme and the other Lord Brantam and Ginx's Baby. Such a condition of society does not exist in this country, and it is not necessary that we should refer always to English precedents or English practice when we come to make a new system of fundamental law.

The doctrine then was that the greater the truth the greater the libel. Although I admit to-day that there may be utterances of truth from improper motives and for unjustifiable ends, which are as libellous as if they were false, yet I put the amendment upon grounds that I think protect every citizen against any malicious defamation of his character in the public press or by any other means. My pro-

vision is that in all trials for libel, whether civil or criminal, it shall be a sufficient defence that the publication is true and was made through good motives and for justifiable ends.

That raises the privileged question just as the amendment of the gentleman from Philadelphia raises it, but, at the same time, it does not go so far as the amendment of the gentleman from Philadelphia, because this amendment requires, in the first place, that the publisher or defendant in any case shall establish the fact that the publication is true, and then that it is for justifiable ends. Allow me to illustrate this by a newspaper publication which I happen to have before me, and which seems to bring this matter right home to ourselves, which I picked up in a street car since the sessions of this Convention in Philadelphia, and which will answer for the purpose of showing the force and effect of my argument. The paper is called *The All Day City Item*, and this is the first, and I believe the only number of that publication that I ever saw; and it speaks about the Constitutional Convention as "the stupidest body ever assembled in this city." Now, while our modesty will prevent us from controverting the fact that he may prove the truth of that declaration, yet, unless he can show that it was done through good motives and for justifiable ends, then the publisher of that article would be guilty of a libel, the language being of a defamatory character, and calculated to bring us into public hatred, contempt or ridicule, because it was published, not when we were before the people for election, and therefore for a justifiable end, but after we had assembled and taken upon ourselves the duties of this office, and when our capacity was not a subject before the people. Therefore this man published this from improper motives, there being no justifiable end. And the probability is that this "bummer" of the *All Day City Item* published this remark of this Convention because we do not keep a hotel, where he could come with his family and sponge upon us for days and weeks and months together. [Laughter.] I know no other reason why it is that he has thus gone out of his way to pronounce this a stupid body, which I take to be a subject beyond the range of his capacity to grapple with or comprehend.

And, in another editorial in the same issue, he refers to the condition of the milk

of Philadelphia, and calls the attention of this Convention at the same time to this subject of milk, thinking that the capacity of this body is about on a level with the investigation of the condition of the milk market of this city, and asks us to take that into consideration. Now, I say that the Constitutional Convention of the State of Pennsylvania is hardly the proper body for such a question, and that it should not be called upon to investigate the milk question in Philadelphia; but I call the attention of the Philadelphia delegation to this subject, and hope they will buy a cow for this blatant calf, that he may have a bountiful supply of the lacteal fluid, and may pursue, without molestation, his proper avocation of a sucker. [Laughter.]

I say, therefore, that although his publication may be true, he has published it, as I contend, from improper motives, and it is a pertinent illustration of the question we have before us.

In this country, where the government depends upon the will of the people, and and the rulers upon their suffrages, and questions affecting either are brought before them for their consideration, either to be voted upon or otherwise, it is proper that the greatest latitude, within the limits of propriety, should be allowed to the public press of the State. We do not desire their silence on subjects of public interest. Whenever there are corruptions in the administration of public affairs, let them be thoroughly searched out and investigated; and whenever we find that a man is running for an office who has been guilty of corruption in the exercise of any former position of responsibility; whenever we find a man who, in the administration of his existing office, is guilty of any tergiversations, I would

—"put in every honest hand a whip,  
To lash the rascal naked through the world."

And let the public press be free to do this for us. Let it purify public morals, and let it give its public condemnation to everything and everybody which deserve public exposure, but keep within the limits of truth; and let it be understood that when a man in public position, such as comes under the privileged classes, is assailed by a publication and he is silent, he has thereby admitted his guilt and dare not have the subject investigated in the courts of justice. Under the law of libel, as it exists to-day, when a man brings an action against the publisher, or a criminal

prosecution, and takes him into court for trial and succeeds, it is no vindication of his character, because his success may simply prove that the thing is true, and if the damages that he recovers be heavy, that he has recovered them on account of the principle, "the greater the truth the greater the libel," and the injury to his reputation is aggravated by the truth published.

Now, Mr. Chairman, I believe that there should be allowed to the press of Pennsylvania the privilege of publishing whatever they find to be true, not of private individuals in their private capacity, as where a man has been guilty of some transgression in his earlier days, when he was overcome by temptation and desires to reform; and not being before the public, he should not have this brought against him again in after years in private life; but let every man who goes before the people for public favor take his character in his hands, and if he does not feel willing to brave the test of the scrutiny of the public press of the State, let him remain in private retirement, or if he braves it and cannot bear it, let him sink under its condemnation. I do not think that the public morals of this State would be affected seriously or injuriously by this rule. I do not think that any man can find fault with this principle of the law of libel. I have stated it in this short provision, I think, in as few words as it can be stated.

First, the matter published must be true. Now it will not do to say that the newspaper press are permitted to publish anything and everything recklessly and without proper care in the investigation of the question, is it true or is it false? Let them not show too much avidity in hunting up aspersions of individual character, of the character of those in high and public places. Let them exercise that degree of scrutiny which this provision would make it to their interest to exercise, before they send abroad anything to the world which is calculated to bring a man into public hatred, contempt, or ridicule. When they have done that, individual reputation will be protected and there will be a free and open field for the investigation of the facts connected with the conduct of the individual whose career is a matter proper for public investigation, and no man ought to be afraid or hesitate to do this.

I have cut the section short in another particular by leaving out of it that part

which says, "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."

That is stricken out, which the amendment of the gentleman from Philadelphia does not propose to do, because I think that it is an idle declaration, a sort of thing that ought not to go into the Constitution. There is no rule with regard to the mode of trial of indictments for libel that differs from the rule in the trial of any other indictment for a misdemeanor, and it is the well-established law in Pennsylvania, and has been judicially declared and re-declared, that the jury are judges of the law as well as of the facts, and that the whole subject is before them, and for their decision.

I say, then, that there is no necessity to add that to the section, and this clause has always been to printers and publishers, and to others, a delusion and a snare. It has been calculated to make the people believe that they had some different rule for the trial of libels from that which existed by the common law of England as to other trials; but it really practically amounts to just the same, and it is "paltering" with them "in a double sense," and while it "keeps the word of promise to the ear," yet "breaks it to the hope." I propose to meet this thing squarely and fairly and, as I think, in as few words as the question is susceptible of being comprehended, that it shall be a defense that the publication is true and was made from good motives and for justifiable ends.

That makes it a privileged question; and the first step in establishing the fact that it is a privileged question is, that the words are true; but that is not enough. All these three ingredients are necessary to be made out to the satisfaction of a jury before the man can be acquitted in a criminal court, or before he can have a verdict in his favor in a civil action: First, that the words are true; secondly, that they were published from good motives; thirdly, that they were published for justifiable ends; and very often when that third proposition is made out, you make out the whole case, especially as to the second branch of the defense.

Now, is there any difficulty in getting a jury to understand this? It goes into the question of a man's intent. We must find the criminal intent in all cases when we undertake to convict a man of a crime or

of a misdemeanor, and we have divided offences according to the motives, and under the circumstances which attended the individual who is charged with the commission of the offence. We have divided murder into first and second degree, in accordance with the facts as to whether the defendant or prisoner had time to premeditate or not. By rulings of the courts at different times from the time that act was passed down to the present moment, we have had what "premeditation" means well established. Therefore, the jury must go into the heart of the man and find, not by what he says, but by all his acts and all the circumstances that surround the case, whether he had cooling time; whether he deliberated; whether it was premeditated murder; and if so, he is guilty of murder in the first degree; but if it was done in heat or haste, then it sinks down to another degree. As I have already said, we must find the criminal intention. It is not enough, in order to convict a man of larceny, to prove that he has taken and carried away the personal property of another. It must be shown that he did it *animo furandi*, and that animus is discovered by the circumstances and the facts surrounding the case and under which he committed the act. Is there any difficulty in finding out, having, in the first place, established the fact that the words are true, that the man about whom they were published was in such a public position, or the facts which were published about him had such reference to his position in life, or the circumstances under which they were published were such that it must have been a proper subject to be inquired of and for the public to know? There are no people who are better able to master and decide that question than the intelligent and independent jurors of this Commonwealth to whom this question must be submitted.

I therefore think that we have got an amendment in these few words which will meet all the requirements of the freedom and liberty, but not the licentiousness, of the press, and at the same time we protect the community, and allow that free investigation of all proper subjects of public interest and investigation which should be allowed in every free country.

MR. GIBSON. Mr. Chairman: The Committee on the Declaration of Rights took into careful consideration the various propositions that were submitted to them,

and I am sure that no section of the Bill of Rights received a more careful consideration than the one in relation to the press and to libels. The proposition contained in the amendment just offered by the gentleman from Bucks (Mr. Lear) was before that committee in various shapes. I do not think, at least I have now no recollection, that the proposition submitted in the amendment of the gentleman from Philadelphia (Mr. Dallas) was before the committee at all. I rather think that as regards that amendment the committee would have been favorably disposed towards it; at least I myself would have had no objection to embodying it in the section and submitting it to this Convention as we did other matters which we thought of sufficient importance, and which we considered the public necessity required should be passed upon by the body at large. But, sir, after all the consideration we could give this subject and the various propositions that were submitted to us, we came to the conclusion that the public necessity required that no amendment of this character should be made to the seventh section of the Bill of Rights; and in giving my reasons (and I think they were the reasons of the committee, or a majority of them,) I shall proceed with deliberation, because it is a matter of very great importance, and I do not wish to say anything that can be misunderstood, or that will not stand upon its own basis as a reason for rejecting these propositions.

I think the submission of such propositions, the attempt to engraft them upon the Constitution of the State of Pennsylvania, to incorporate them into the Bill of Rights, arises from a mistaken idea altogether as to the object of a Constitution and of the Bill of Rights in particular. Sir, this Convention is not assembled here to declare what the law of libel is any more than the law with regard to ejectments or contracts. It is no part of the duty of this Convention to assert as one of the inherent principles of public liberty or of the rights of persons that there shall be any particular manner of trying, or any particular kind of defence in actions of libel between individuals than in actions which arise regarding land or money.

The whole misapprehension has arisen from the mere fact of our fathers, when they made the original Constitution, having declared in the Bill of Rights certain fundamental principles which the

necessities of that time required. It was necessary for our fathers, having declared this country free and independent, the British people then just emerging from the darkness in which they had been enshrouded, and the principles of liberty being gradually made known to the world—the birth of this nation being at that period of time—it was necessary that certain principles fundamental to the liberties of the people should be declared in what is known as the Declaration of Rights. First and foremost among those was that which is known as the freedom of the press.

But, sir, the freedom of the press at the present day is understood in a very different sense from the freedom of the press at the time it was originally declared a part of the Bill of Rights. It meant the liberty of the press to discuss matters of government and the conduct of officials who administered the government. The very able and eloquent argument that has been made by the gentleman from Lancaster, (Mr. H. G. Smith,) and the illustrations that he gave, all show that the great contest was between the government and government officials and the publishers of the public press. That is an entirely different thing from a matter of libel, from an action of defamation, which is tried like any other action, and which is between private individuals.

I understand the amendment of the gentleman from Bucks to say that the action of libel—in other words, he picks out a particular class of defamation leaving out slander—the particular class of defamation known as libel ought to be subjected, by the Constitution we are to make, to a different species of rules from any other kind of action that is brought in our courts of justice. Sir, the free communication of thought and information is one of the invaluable rights of man, and every citizen should be allowed to freely speak and print on any subject, being responsible for the abuse of that liberty; but the right to investigate conduct of public officers and criticize the government itself is a very different thing from what are familiarly known to us as actions of defamation between individuals. Every man can understand what is meant then by the freedom of the press, and it is well now to declare in the Constitution as our fathers declared, “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.” That was the first principle that our fathers declared in this section.

Then there was another one of equal consequence and of equal importance; and I am really surprised that my friend from Bucks, a distinguished lawyer, should ask to strike from the Constitution one of the great landmarks of human liberty. Sir, when Lord Erskine fought the great battle for the right of trial by jury before the English judges, it was on this very question of libel. At common law, as it then existed, the law of libel was different from the law of any other case. The judge took the writing in his hand and told the jury, “this is a libel,” and all that the jury were allowed to do was to find or not the fact of publication. Then the great principle that the law and the facts in libel suits should be left to the jury to determine was carried by that man, that hero, if I may call him such, and the British Parliament adopted it as the law of England. It was just at that time that the Constitution was made here, and it was thought necessary also to declare as part of the common law of this country, that in all indictments for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases. It was needed at the time. It was a principle of human liberty that had to be declared, and I trust that this Convention will not now strike out this glorious principle from our Declaration of Rights.

Sir, we have become so familiar with the law at present, so familiar with the idea that the law and the facts in all criminal cases are to be submitted to the jury for their determination, that we forget the origin of these great principles. We forget the origin of this one in particular. Sir, that is sufficient of itself, and it ought to be sufficient to satisfy the press of this country, that the jury has the right to pass upon the matter and find whether the publication is libellous or not.

They complain, I am told, that judges, in charging the jury, will say to the jury, “this matter is libelous, and if you believe so and so, you must find the party guilty.” So they do in every other case. They will tell the jury: “If you believe the prosecutor in this case, then the defendant is guilty” of larceny, or whatever the offence may be; but the jury still have the law and the facts before them and have a right to find the party guilty,

or not guilty, as the facts of the case may determine.

But, sir, the great and serious objection to incorporating in this section of the Bill of Rights the amendment offered by the gentleman from Bucks is that it places in the Constitution a means of trying a certain class of cases, while other cases are excluded. The seventh section of the Bill of Rights was not intended to provide any particular law with regard to libel; it was simply intended to lay down certain fundamental principles; and hence there has arisen the misapprehension that it is a part of our duty, in the Constitution, to incorporate provisions of this kind. Why, sir, the common law—

The CHAIRMAN. The Chair is obliged to remind the gentleman that his time, under the rule, has expired.

Mr. HEMPHILL. I move that the time be extended. ["Aye!" "Aye!"]

The CHAIRMAN. The Chair hears no objection, and the gentleman from York will proceed.

Mr. GIBSON. Why, sir, the common law which exists in this country, and which we got from the mother country, is sufficient for all the purposes of suits between individuals in all kinds of cases, or between the government through its prosecuting officers and the defendant. If anything in the common law requires change, I am surprised that lawyers on this floor should say that it is the province or duty of a Constitutional Convention to alter the common law. Sir, there is a branch of this government whose duty it is to declare what the law is. One of their peculiar provinces is, if they find the common law not suited to the times, to pass an act of Assembly saying that the law shall be so and so in the future; and so it is with regard to libel. Whatever grievance the gentlemen of the press may have, whatever remedy they ask for, they must apply to the Legislature, and not come before this Convention and ask that it may be adopted in the Constitution.

Mr. CORBETT. If the gentleman will allow himself to be interrupted, I ask him this question: Whether it would be policy in this Convention to incorporate in the Constitution any rule of law over which the Legislature, that is, the future Legislature, has legislative power and can control; and whether by incorporating into the Constitution a rule of law we are not doing an act which may lead us into difficulty in the future?

Mr. GIBSON. If I understand the gentleman's question, it is exactly in accordance with what I have been arguing; I think we should not. I do not think that anything in the shape of legislation or anything that the Legislature could take under their own control, unless it is something that the public necessity imperatively requires, should be adopted by this Convention as a part of the Constitution. I believe that we are only here to declare certain fundamental principles of the organic law, certain rules by which the Legislature may be guided, but especially in the Bill of Rights, which underlies the provisions of the Constitution itself, which is a mere declaration of principles of human right and human liberty, should we be careful not to incorporate anything which will make distinctions between different individuals or between different kinds of law suits.

But, sir, with regard to the amendment of the gentleman from Philadelphia—

Mr. DALLAS. If the gentleman will permit a question at this time, I ask him whether in the Bill of Rights, as it now stands, the words "in prosecutions for the publication of papers" do not refer to actions for libel, and whether that is not providing a rule for the trial of that kind of cases?

Mr. GIBSON. It is, incidentally. It is only as a result, as a corollary from it. The main object of the declaration in the Bill of Rights, as I understand it, was merely the assertion of the principle. Of course, if once incorporated into the Constitution it becomes the governing law on the subject; but the object was not to provide any special means of trying those cases rather than any other.

I was about to say in regard to the amendment of the gentleman from Philadelphia that I think the provision that already exists in the Constitution ought to be sufficient of itself and so I believe the Committee on the Declaration of Rights supposed. I think all of them were unanimous in regard to that. They made no alteration with regard to officers, with regard to the general principle that was declared in the Declaration of Rights, inasmuch as there was sufficient in that for the protection of the public press from prosecution; that is, in examining the affairs of the government. The gentleman from Philadelphia who is a member of that Committee (Mr. Newlin) supported a proposition, and I refer to it now because his attention seems to be turned toward me,



similar to that introduced here by the gentleman from Bucks, which extended to all cases for libel. I think such was the case; I may be mistaken in regard to it.

Mr. NEWLIN. If the gentlemen will allow me to explain, I will say that he is mistaken in his statement. I advocated allowing the truth to be given in evidence in all cases, but I am opposed to the amendment of the gentleman from Bucks for the reason that it takes the question from the jury to a certain extent. I will advert to that when the gentleman from York is through.

Mr. GIBSON. I stand corrected. I have not a distinct recollection of what occurred at the time we had the matter under discussion in committee; but I was under the impression that in regard to the examination of the acts of public men, of those in public office, the Committee on the Declaration of Rights were unanimous in the opinion that the provisions of the seventh section of the Bill of Rights were sufficient for all purposes. If I understand the amendment of the gentleman from Philadelphia, it simply is to incorporate into the seventh section of the Bill of Rights the provisions of our acts of Assembly as they at present exist. But why does not this cover the whole case? "In prosecutions for the publication 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 libel the jury shall have a right to determine the law and the facts under the direction of the court as in other cases." That seems to be a sufficient declaration for every purpose, and I think we are going very far when we follow that up by saying that the party shall be acquitted if the publication was from conscientious motives, or if it was true and was published for justifiable ends. To say that it shall be given in evidence seems to cover the whole ground. Then, if the law and the facts be left to the jury, the jury will decide whether the party is guilty or not guilty.

I would not say one word to interfere with the liberty of the press; I venerate it too much; but the press ought not to be given what my friend from Bucks calls the liberty of licentiousness.

Now, sir, in conclusion, as the gentleman has referred to an article published in this city, and has said that there might be

an action against the publisher in that case as for defamation, I would say that the seventh section of the Bill of Rights as it now stands would cover that very case, because it says. "In prosecutions for the publication 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."

Sir, we are men in public capacities, and are open to criticism. I, for one, do not find fault if gentlemen of the press, or any other gentlemen, think that we are not competent for the discharge of our duties, and they have a perfect right to say so, if they think so, and the only way in which we can controvert that is to go before the people themselves with proper provisions in our Constitution, and then they will say that we are competent for our task by adopting a proper Constitution when we submit it to them. If we can do that, the people will ratify our work and exonerate us from any such charge.

Mr. LEAR. In consequence of some of the gentlemen of the committee differing from me in regard to the effect of the latter part of this section as it at present stands in the Constitution, I propose to withdraw that part of my amendment which asks for the striking out of that part which follows Mr. Dallas' amendment. In other words, I propose to substitute my amendment for Mr. Dallas' amendment merely. I do not know whether or not that is parliamentary and can be done.

The CHAIRMAN. It can be done, and the amendment of the gentleman from Bucks will be so modified.

Mr. NEWLIN. Do I understand the gentleman from Bucks to include in his motion to strike out the words, "and the jury shall have the right to determine the law and the facts under the direction of the court as in other cases?"

Mr. LEAR. Yes, sir; my motion was to strike out those words; but I have now withdrawn that part of my amendment.

Mr. NEWLIN. Mr. Chairman: The amendment now proposed by the gentleman from Bucks is one that I can support. I had intended calling to the attention of the Convention the matter of his moving to strike out the present provision which allows the jury to judge of the law and the facts. It was evidently inserted for a cause; but as the gentleman him-

self now recognizes it, it is unnecessary to say anything more on that subject.

The proposition now is simply to allow the truth to be given in evidence in all cases of libel, whether civil or criminal. The law of libel, or what is supposed to be the law of libel, has been so learnedly and lucidly explained—if it is possible to call that lucid which is construed differently in every part of the House, and is different in the opinion of every judge that passes upon the question—I say the different views of the law have been so well expressed here that I do not propose to go over that ground.

In civil cases, actions for damages, the truth may be given in evidence in mitigation of damages; but still the jury may put the costs upon the defendant, and the costs may be a very important matter—a matter of very great charge upon him, and equivalent to a verdict for damages. The provision in the present Constitution simply allows the truth to be given in evidence where the matter is proper for public information. Now, what is proper for public information is a matter which, of course, continually varies, according to the notions of the particular tribunal before which the question comes; whereas the question of truth is a pure question of fact; and in the settlement of that question of fact, the jury can act entirely for themselves, without being governed at all by the views of the court as to what is proper for public information. It is true that even now a jury may disregard the charge of the court, so that if the court were to say a certain publication, a certain matter, was not proper for public information, the jury could hold otherwise. It is a question of policy, and so mixed up with the question of fact that the jury would undoubtedly be swayed to a great extent by the charge of the court, whereas if it is remitted solely to a question of fact, whether the article is true or is false, then the jury acts untrammelled entirely, and judges for itself as to this which is really, and ought to be, a simple question of fact.

The law in various States of the Union now provides what it is proposed to embody in the Bill of Rights here. In the States of Illinois, Florida, Nevada, Kansas, Rhode Island and West Virginia, there is now in the Constitution of each one of those States a provision exactly similar to this; that is to say, that in all actions for libel, whether civil or criminal, the truth may be given in evidence,

and it shall be a complete defence, provided the publication was made from good motives and for justifiable ends; and it seems to me that the restrictions requiring the jury to find that the motive of publication was good and the end justifiable, in addition to requiring the truth, will prevent any undue license being exercised by the press in this matter.

Mr. TEMPLE. I should like to ask the gentleman a question, with his permission. I ask whether he is in favor of any of the amendments before the committee?

Mr. NEWLIN. I am in favor now of the amendment of the gentleman from Bucks, having in it the provision which he inserted at my suggestion. I can imagine no ground of public policy whatever upon which can be defended the proposition that the truth, when published for good and justifiable ends, shall not be given in evidence in any case whatever of libel; and for that reason I shall support the amendment of the gentleman from Bucks.

Mr. SHARPE. Mr. Chairman: The section under consideration as it came from the hands of the committee is an exact transcript of the seventh section of the ninth article of the present Constitution. That part of the section which has elicited the present discussion reads as follows:

"In prosecutions for the publication 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 libel the jury shall have a right to determine the law and the facts under the direction of the court as in other cases."

The amendment proposed by the learned gentleman from Philadelphia (Mr. Dallas) was to strike that out and insert in lieu of it the following:

"All papers relating to the conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, shall be privileged, and no recovery or conviction shall be had or sustained in any suit or prosecution, civil or criminal, for the publication thereof, except when such paper shall have been maliciously published; and malice shall not be presumed from the fact of publication."

The amendment to the amendment, offered by the distinguished gentleman from Bucks, (Mr. Lear,) is to strike out the same words and insert in lieu thereof

"In all trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defence, and the jury shall have the right to determine the law and the facts under the direction of the court as in other cases."

These three propositions, thus collated and brought into juxtaposition, present three distinct and separate questions for the consideration of the committee. The section as reported originally has been the law of this State from the earliest period of its history. It declares that where a publication relates to the conduct of a public official or contains matter that is proper for the public information, the truth shall be a justification for the publication. The proposition of the gentleman from Philadelphia (Mr. Dallas) makes two radical changes in the organic law of the State in this respect. The first is that where the paper relates to the conduct of an official or a man acting in a public capacity, or where it contains matter proper for public investigation or information, it shall be privileged; that is, it shall not be necessary, when the publication is of that character, that the publisher shall be compelled to prove the truth of the subject matter, provided he has not published the same maliciously. If he has made an honest mistake, if the information is proper for the public, if he has published it from proper motives, not through malice, not to gratify private malevolence, then, says the amendment of the gentleman from Philadelphia, he shall come to no harm, and he shall pass from under the edge of the sword of justice without hurt.

The amendment of the gentleman from Philadelphia also contemplates a change in the rule of evidence that is observed now in trials of this character. The best authority in this State has declared that from the publication of the matter itself, if it be of a libellous character, the law infers malice. The amendment of the gentleman from Philadelphia contemplates that the mere fact of the publication alone shall not be *prima facie* evidence of malice, but that it shall be a distinctive fact to be proved upon the trial, on the part of the Commonwealth in a criminal prosecution, or on the part of the plaintiff in a civil action, as any other fact in the case is proved.

Now, sir, the proposition of the gentleman from Bucks (Mr. Lear) goes far beyond both the original section and the amend-

ment of the gentleman from Philadelphia. It is still more radical, and it provides that in all trials for libel the truth shall be given in evidence, provided it be published with proper motives and for a justifiable end.

From these three propositions thus before this committee for its consideration, it is our bounden duty to select that one which best harmonizes with the spirit of our age and which is most congenial to the genius of a republican government.

I believe that the present Constitution is defective in this regard. If it has been the hand-maiden of injustice; if it has been the minister of wrong; if it has been a poisoned arrow to pierce the heart of a free press; if it has suffered men to get to the top of the political ladder, and to entrench themselves in high places of trust, who ought to be crawling in the dust of infamy at the foot of the ladder, will any gentleman rise in his place in this august presence, and say that this Convention shall not redress that wrong? Will any gentleman go home to his constituents and say to them: "It is true we found this wrong entrenched in the organic law of the State, but my reverence for antiquity prevented me from redressing it."

I know, sir, that there is a class of thinkers on this floor who believe that we have no jurisdiction over this question at all. The very able and exhaustive argument of the learned gentleman from Indiana (Mr. Clark) was the exponent of that school of thought. But, sir, to that school of thought I refuse utterly to subscribe. I believe that this Convention is omnipotent over the present Constitution. I believe that the legislative edict that was sent down to us from Harrisburg, "you shall not touch the ninth article," is as feeble to bind our power, as the green withes and new ropes were to bind the limbs of Samson.

I have not that sympathy, nor that respect, for hoary-headed antiquity which will prevent me from brushing out of the present organic law all such obstructions as I perceive are retarding the general prosperity of the Commonwealth. The lamp of experience sheds its light to illuminate our pathway onward, not to light us backward; and keeping this light before me and following close after it, I shall endeavor according to the best of my poor ability to do what shall best promote the imperial grandeur of this Commonwealth, what shall best consist with the spirit of our times, and what

shall best harmonize with the prosperity and interests of our people.

Now, sir, the question before the committee involves the liberty of the press, and I lay it down as a fundamental principle that in a free State the press should have just as much liberty as is consonant with the public welfare. In order to ascertain what degree of liberty the press ought to have, it is proper to ascertain first what are its true and legitimate functions. Manifestly, the newspaper ought to be, as I believe it is, the school-master of the masses. It ought to illuminate their understanding; it ought to improve their morals; it ought to lift them up into a higher plane of existence; it ought to teach them that which is right and beneficial and proper; it ought to furnish them with mental food which is healthy and nourishing. This may be termed the private and social duty of the press. But, sir, beyond this and above this, it has a higher duty still to discharge. It is the duty of the press to educate the public mind upon affairs of State, to drag from its concealment the malfeasance of public officials, to watch and denounce all arbitrary acts of government, to communicate to the public everything that is necessary and proper for its information. In short, sir, the newspaper ought to be, as I believe it is, the wide awake sentinel and guardian which stands upon the watch-towers of the State to protect the liberties of the people.

This being the function of the public press, the next thought that presents itself is, how shall the greatest amount of liberty be extended to it that is consistent with the public welfare, and that involves the question, what does the public welfare demand of the press?

The CHAIRMAN. The gentleman's time has expired.

Mr. NEWLIN and others. I move that it be expired.

The CHAIRMAN. The gentleman from Franklin will proceed, no one rising to object.

Mr. SHARPE. Mr. Chairman: Manifestly the public welfare demands that the people should have the earliest and most accurate information of all doings of the government. The public welfare requires that the people should have early and accurate information of the conduct of their servants whom they have elevated into positions of trust and profit. The public welfare requires that everything, the information of which would advance

the public weal, shall be made known at the earliest possible moment of time.

It is in regard to such matters that the section as reported from the committee declares that the truth shall be given in evidence, when an indictment for libel has arisen upon a publication embracing matters of the kind to which I have just referred; and it is to exactly the same sort of subjects that the amendment of the gentleman from Philadelphia applies. He does not carry by his amendment the drift of the subject matter which shall be justifiable publications, beyond the language of the section, but keeps it closely within the four corners of the original section as reported by the committee.

But, sir, the amendment of the gentleman from Bucks goes far beyond the section. It throws wide open the doors of evidence in all trials for libel, both civil and criminal. Now, the line that divides what is proper for the public to know, from that which the public has no concern to know, is exactly the same line that separates the liberty of the press from its licentiousness. The proposition of the gentleman from Philadelphia is in favor of the liberty of the press; the proposition of the gentlemen from Bucks is in favor of the licentiousness of the press. A free press is the greatest ornament and bulwark of a free State; a licentious press is the greatest curse that could happen to any State.

I cannot support the amendment of the gentleman from Bucks (Mr. Lear) because if it be permissible that in all prosecutions for libel the truth shall be given in evidence, then the publisher of the newspaper may enter the private houses of our citizens; he may drag forth the secrets that lie there between the master of that house and his household gods, and he may give them to the world; and when he is prosecuted for publishing such matter, under the amendment proposed by the gentleman from Bucks he is permitted to give the truth in evidence. Aye, but says the gentleman, it must be published with good motives and for a justifiable end. I admit the qualification in all its force, but still I insist that it is not potent enough to curb the licentiousness of the press. Why, sir, a vindictive and malicious man having discovered some secret about his neighbor, with which the public have no concern whatever, rushes into print with it; he argues thus: "The present law allows me to prove the truth

of that libel; the libelled man knows that I can prove the truth of it; it is true that if I do not succeed in showing that my motive was good and the end justifiable, I must be convicted; but I will take the risk; I have two chances; I have the chance that this man knows that what I published about him is true, and knowing that I can give it in evidence in a court of justice he will prefer rather to submit to the outrage than to go into a court of justice and subject himself to the exposure of a public trial."

You observe, Mr. Chairman, that the newspaper publisher in such a case as that would have that chance on his side, and we all know from our experience of human nature how strong the fear of public shame is to a sensitive man. The publisher of the paper might use still a further argument: "I know that this is the truth, and when I get into court I can prove it to be true; and although I cannot be acquitted unless I was justified in publishing it, yet as soon as I get the truth before the jury, I will trust to the prejudice that it excites in the minds of the jury, and thus hope to escape conviction."

Those objections, to my mind, seem unanswerable in reply to the proposition of the gentleman from Bucks, to allow the truth to be given in evidence in all cases. I say that a newspaper man has no right to publish in any case, whether it be true or false, whether it be for justifiable or unjustifiable ends, that with which the public have no concern, and which pertains exclusively to the individual man.

Now, sir I turn away for a moment from this proposition to the amendment of the gentleman from Philadelphia. You will observe that his amendment embraces only publications relating to the conduct of men in official capacity and matters that are proper for public investigation and information. What is the trouble about the libel law as it now stands in our Constitution? Keep in mind that the class of subjects embraced in the gentleman's amendment and in the section is precisely the same. What is the trouble? What is the operation of the present libel law of this State? It is this: A newspaper publisher receives information from what he supposes to be a reliable source. This information is about a man in public employment and such as the people ought to know. He publishes the statement. He is indicted in the court of quarter sessions

and brought up for trial. The Commonwealth proves the publication; the Commonwealth must show by the paper itself that it contains libellous matter; and then the only other fact it has to prove is that it applies to the prosecutor, and there the Commonwealth rests. It is not necessary for her to prove actual malice, because the rulings of the courts are that malice is presumed from the fact of publication alone. Thus stands the Commonwealth. Now how stands the defendant? He has, as I have supposed, received this information from a reliable source; it is about a public man; it is of such a character that the people have a right to know it; but unfortunately, when he comes to sift his evidence, he finds that he cannot prove the truth of the publication—perhaps not at all, or if at all, then not as broadly as has been stated. What is the result? The result is inevitably a conviction. No matter how pure his motive, no matter how reliable his information was, the publisher is there with his hands tied; and it is to untie his hands under such a state of facts that the gentleman from Philadelphia proposes by his amendment just this and nothing more.

Remember, sir, that no man has a right to publish a libel under the amendment of the gentleman from Philadelphia, against an official, or containing matter proper for public information, if he does it maliciously. If malice is shown to exist, he is guilty under the very language of the amendment. Now over this question of malice the jury, under proper instructions of the court, would have the whole jurisdiction. If a man of his own volition, or upon authority which he would not rely upon in the ordinary affairs of life, or with gross negligence, publishes a libel about a public man, there would be in that state of facts, even under the amendment of the gentleman from Philadelphia, such evidence of malice, want of care, want of regard for the rights of his fellow-man, as would induce a jury, under such circumstances, to convict him. But, sir, I put it to you, whether, when a newspaper publisher has received intelligence from trustworthy sources upon which he would stake his own life, his own liberty, his own property, his own reputation, and when that information is of such a character as the public have a right to know, I ask you shall he be treated like the felon who deliberately and in cold blood and

maliciously robs his neighbor of his reputation?

The rule of the present Constitution had its origin at a very early day. It is covered with the hoariness of almost a century. It was the conception of an age when the world moved slowly; when daily newspapers were unknown; when the power of steam that now drives us over mountains, through valleys, and across rivers with the swiftness of the wind, was unknown; when lightning, that vassal which carries the messages of nations around the world in the twinkling of an eye, was unheard of and undreamed of. That, sir, was the era in which this rule had its origin. Then men had time to think and time to reflect and time to weigh evidence. But, sir, we are living in an entirely different age. We are living in a time when the course of events are chasing each other across the world's stage of action as speedily as the pulsations of the human heart; when the thirst for office and for gain has become as insatiable as the waves of the ocean. The whole face of nature and of society has been changed by the arts of civilization. A morning paper is now an absolute necessity. And will you compel a newspaper man in this age of rushing events, when he receives information from a reliable source, and he publishes it, believing it to be proper for the public, will you require that man to sit down and deliberately weigh the proofs on the one side and on the other, and decide correctly upon the spur of the moment, under the penalty of being sentenced to the penitentiary for a libellous publication? I do not believe that this Convention intends to so muzzle the mouth of the press, which has been muzzled for the last century in this Commonwealth.

Understand me, Mr. Chairman, I am opposed to a licentious press. I reiterate again that the press has nothing to do with the private concerns of private men; but the amendment of the gentleman from Philadelphia contemplates opening no such door as that; it simply declares that an honest mistake, honestly made, shall not put the man who makes it in a felon's cell.

MR. J. W. F. WHITE. I should like to know what is meant by the language, "publication of papers," in the amendment of the gentleman from Philadelphia?

MR. DALLAS. That language is precisely taken from the present Constitution: "In prosecutions for the publication of papers

investigating the official conduct of officers or men in public capacities." I do not know how, by entering into any explanation of it, I can make it more plain than the language itself is. It has always been well understood.

MR. J. W. F. WHITE. Does it mean official or semi-official papers? Or does it mean simply articles published in a newspaper?

MR. DALLAS. It certainly in my judgment would include articles published in newspapers. It includes all papers published.

MR. J. W. F. WHITE. Very well. Now, what is there in the gentleman's amendment that requires that newspaper article to be true?

MR. DALLAS. Nothing; and it should not be required.

MR. J. W. F. WHITE. Then, Mr. Chairman, I cannot vote for it. I think it would be a monstrous doctrine if we should say that an editor anywhere in the State of Pennsylvania may publish a newspaper article, and then when he is prosecuted for it, scandalous and false as it may be, that the prosecution must prove that he published it maliciously. That is the amendment. Now, sir, I am opposed to changing the present salutary rule of the law in this respect; I would not declare that a libellous article, libellous on the face of it, shall not be considered libellous until the innocent, injured plaintiff proves that the editor published it maliciously. I would require that editor to stand and suffer the penalty of a libellous publication if it be a falsehood that he has published. I therefore oppose the amendment because the article may be false in itself, and yet the plaintiff cannot recover unless he prove in the first place the falsehood of the article and then prove that the editor published it maliciously. Why, sir, it seems to me that the gentleman from Franklin (Mr. Sharpe) has certainly misapprehended these two amendments, for in place of that being the liberty of the press, it does strike me that it would be the licentiousness of the press. Malice is one of the most difficult things imaginable to be proved in law. An editor publishes an article; how under the sun can the plaintiff prove whether he published it innocently or maliciously?

MR. CORBETT. I should like to interrupt the gentleman for a moment. Can you prove it in any other way than by the facts and circumstances—the defamatory

character of the article, the falsity of the charge? Can you prove it in any other way?

Mr. J. W. F. WHITE. The amendment here proposes that it shall be proved in some other way.

Mr. CORBETT. The gentleman will understand me. I agree with him; and I ask practically, can you prove it in any other way than by showing the falsity and defamatory character of the article, and the circumstances under which it was published?

Mr. J. W. F. WHITE. Generally you cannot. In some cases you might possibly prove direct malice; but a malicious, cunning editor that wants to cover up his tracks would so publish the matter, and so conduct himself that it would be impossible to prove malice, if the jury could not infer malice from the character of the article. But if he has been imposed upon himself; if he has acted through good motives in the publication; he can prove how he got the information; he can prove how he came to publish the article; he can thus vindicate himself and prove his innocence.

Mr. H. G. SMITH. Will the gentleman allow me to interrupt him? Can a publisher do that under the law as it exists in Pennsylvania to-day?

Mr. J. W. F. WHITE. I am speaking of the possibility of the thing, not of the present law. I say, sir, that it is in the power of the editor to prove whether he has been imposed upon or not; where he got his information; and if he has recklessly put an article in his paper without stopping to inquire whether it is true or not, it is a monstrous doctrine to say that he shall go scot-free, unless the injured party can prove that he did it maliciously; and that, in my understanding, is the amendment of my friend from Philadelphia. I cannot vote for it.

I am willing, sir, to modify this section of the Bill of Rights. I do not exactly like the amendment proposed by the delegate from Bucks, although he has used nearly the same language as may be found in several of our State Constitutions. It is that where the jury are satisfied that the matter charged as libellous is true, and was published with good motives and for justifiable ends, it shall be a defence. It always seemed to me that that expression, "justifiable ends," was too vague and uncertain. I never could comprehend it. It seemed to me, too, that it might open the door for editors and oth-

ers to publish communications often that the public had no interest in, merely of a private nature, assailing the character of private individuals, often gratifying personal spite or spleen.

Now, sir, I should be in favor of modifying the section in the way I propose to suggest; it is not in order now for me to move it as an amendment, or I should do so. In the first place, I would require that the article published be true, and if we wish to preserve the liberty of the press, and guard against the licentiousness of the press, we must require that publishers see that what they publish is true. They must take the responsibility of the truth of what they publish in the first place; not publish recklessly; not publish at random; not publish at hearsay, unless they are willing to stand up and say it is true, and they have the evidence of the truth of it. I would, therefore, require, in the first place, in order that a defendant shall successfully defend himself in a prosecution for libel, that the thing should be true. In the second place, I would require that the matter published should be proper for public information. In the third place, I would require that it should be published through good motives. With these three qualifications, why should not the editor who publishes the truth necessary or proper for public information and with a good motive, be protected? Do not limit it, as I understand the present Constitution does, to those in official relations or occupying public capacities. I would give this broad protection to the press everywhere, as applied to any man whose position is such before the public that any truth in reference to that man would be proper for public information. Let the editor publish it freely. Why, sir, I know, myself, and every member on this floor knows the fact, that editors in the State have been prevented, and citizens of the State have been prevented, from serving the public by exposing the infamy of some men where they could not do it under our present Constitution. They were not public officials; they were not holding any public office or occupying any public position, and yet the interests of society, the very welfare of society, the good of the community where they lived, required that their real character should be known, and yet it could not be done under our present law.

In place of saying "for justifiable ends," which is an expression that I cannot fully

comprehend, I would modify it in this way. I would strike out all after the sixth line up to the word "and" in the tenth line, and insert :

"In prosecutions for libel the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libellous is true, was proper for public information, and was published with good motives, it shall be a sufficient defense."

That, it seems to me, would guard against ruthlessly and unnecessarily dragging private affairs into the public press, or before the public, where the public do not need information on the subject, where it subserves no public purpose, but is merely a petty fight between a few individuals. That would be prohibited. You should leave it for the jury to decide, in the first place, whether it is true, in the second place, whether it was proper for public information, and in the third place, whether the editor published it through pure motives; and under the section I propose the burden of proof of all these matters would rest on the editor, where it ought to rest, not rest upon the plaintiff to prove what it would be impossible in ninety-nine cases out of a hundred for him to prove, that is the malice of the libeller.

For these reasons, sir, I am constrained to vote against the amendment of my friend from Philadelphia, and I would prefer greatly that the gentleman from Bucks should modify his amendment in the way I have suggested.

Mr. C. A. BLACK. Before my friend from Allegheny sits down I should like to ask him a question. Does the amendment of the gentlemen from Philadelphia propose to leave anything but the question of fact to the jury?

Mr. J. W. F. WHITE. I propose that.

Mr. C. A. BLACK. But does not his amendment propose that, to leave it as a question of fact for the jury?

Mr. J. W. F. WHITE. I think not. I think that under that clause which says that malice must be proved, the court would say to the jury in the absence of evidence as to the maliciousness of the publication, "you must acquit the defendant." That is, the burden of proof is on the plaintiff.

Mr. C. A. BLACK. Would it not be a question for the jury under all the circumstances?

Mr. J. W. F. WHITE. The burden of proof must be on the plaintiff, but the

character of the publication is no evidence of malice.

Mr. C. A. BLACK. It will be for them when they deliberate.

Mr. J. W. F. WHITE. It cannot be for them because the publication is not evidence of malice. Under the present law if the article is libellous the law presumes that it was maliciously published, but under the amendment of the gentlemen from Philadelphia that would not be the rule of law. There would be no presumption or inference of malice from the character of the publication; on the contrary, it would be the very reverse and would have to be proved by other evidence.

The great complaint of the editors of the State is, that in a criminal prosecution they are not allowed to prove the truth of the article published. They may be fined and imprisoned for publishing an article of news or information which is perfectly true and for the public benefit. In a civil action for libel the truth may be given in evidence. But in a prosecution for the same libel the truth cannot be given in evidence. Why not permit the editor to defend in a prosecution the same as in a civil action? This I believe is right and I believe it is all the editors of the State ask. The amendment I suggest will accomplish that. While not open to the objections I have urged against the amendment of the gentleman from Philadelphia, it is more general and comprehensive in its scope, and will the better protect private character, while it gives the largest liberty to the press.

Mr. GOWEN. Mr. Chairman: It seems to me that the proper distinction between the amendment of the gentleman from Philadelphia (Mr. Dallas) and the Constitution as it now is, would best be contrasted by presenting a case which, in the first place, could happen under the present Constitution, and, in the second place, which could occur under the amendment suggested by my friend.

Under the present Constitution, if the editor or publisher of a newspaper is indicted for a libel upon a public officer, the paper is given in evidence. The burden of proof is then thrown upon the defendant, to show that his article was true. If the defendant succeeds in establishing the truth of his assertion, he is acquitted. In ninety-nine cases out of every hundred malice will not be presumed where a truthful publication investigating the conduct of a public officer is made. How would it be under the amendment of the gentleman from Philadelphia, if it should



be incorporated into the Constitution? In the first place, the burden of proof is not thrown upon the defendant at all. There, I take it, is the vice of the whole amendment. Will it be contended that, because a man is a public officer, the editor of a newspaper can charge him with having, in the night, alone, without any witnesses, committed a forgery, and then can say to the public officer: "You must prove that you did not do it; and if you do not you cannot infer malice, and I shall escape." That would be the law, and that would be the construction of this Constitution, if the amendment of the gentleman from Philadelphia were adopted. Is it not so, that the truth of the libellous matter is not essential to be established? That is the scope of the amendment. The next is that malice is not to be presumed from the fact of publication, and therefore a man may sit down in his newspaper room and charge another with the commission of the most heinous offence; he may specify dates, and specify acts, and charge him by all the circumstances with having committed a crime; and when he comes to be tried, although he has made the charge, the burden of proving its truth is not upon him, and unless the other party can prove its falsity, he dare not assume that there was any malice, for what evidence of malice can there be unless it can be inferred from the acts and circumstances of the case? How can a man prove the falsity of such a charge? He may be charged with having committed a forgery of a public document, and then when he had accomplished his ends, with the destruction of the document, how can the man charged prove that it is not true? It is impossible for him to prove a negative. It could not be done on the principle of the statement of the Irishman who, when he was convicted on the oath of one man who saw him steal a pig, said he could bring a hundred who would swear that they did not see him. [Laughter.] Certainly, such a principle as that would be no proof at all. The amendment of the gentleman from Philadelphia permits any one—it need not be an editor—any malicious defamer, to charge a man with the most minute circumstances, with the greatest particularity, with the commission of a crime, a most heinous offence; and then, because that man cannot prove that it is false, he has no right to assume that there was malice, and the publisher escapes scot-free.

What more do we want than we have

in our present Constitution? At the time of the adoption of that Constitution, and in earlier ages, freedom of the press did not mean the right of every man who owned a set of types to throw them at any person against whom he had malice. It meant that the power of the government should not be used to suppress the press. It meant that the press should be free from governmental interference. That was the meaning of "the freedom of the press." It does not mean that John Smith, who owns a set of types, may libel John Brown, who is a private individual. It means only that this great engine for the dissemination of knowledge in this country shall remain so, and shall not be stricken down by the hand of public government.

I admit that when a man occupies a public office, when he is a candidate for public office, when he occupies any public position in the community by which the liberties or the moneys of his fellow-citizens are committed or may be committed to his charge, then all his acts and his character are the proper subject of public investigation. In all of these cases and in every other, wherever the matter may be proper for publication, the present Constitution throws around the publisher all the protection which any one has a right to ask. The only difficulty in the present Constitution, I apprehend, arises from that part of it which says that the jury shall decide the law and the facts as in other cases. That has been in frequent instances assumed to give to the court the power to direct a jury to find a verdict of guilty of libel, which I say they have no right to do under the Constitution. No one can claim for one instant that if, in the face of the charge of the court stating that matter is libellous, the jury should find a verdict of not guilty, the court has power to grant a new trial. And that is the whole question; for if, when in the face of such a charge a jury finds a verdict of not guilty, the court has no power to set aside that verdict, it must follow that the jury is the sole judge of the law and the facts in a criminal action for libel as it is in any other criminal action, and the jury is the judge of the law and the facts as has always been held and must always be held, or the right of trial by jury becomes a mere farce.

That is all I desire to say. I call the attention of the Convention to this, that if by declaring that malice shall not be pre-

sumed from the falsity of the publication, if by turning the burden of proof from the defendant on the prosecutor so that you make a man prove a negative, which it is impossible to do, and take away from the defendant the burden which is now upon him and which always should remain upon him, of proving the truth of his assertion, there would never be a conviction for libel in this State, no matter how false, no matter how malicious the charge might be.

Mr. DALLAS. Mr. Chairman: I do not want to make a speech at this time; but I claim the right to endeavor to extricate my amendment from the embarrassments that the remarks recently made put upon it. The latter clause of that amendment, to which the remarks of the gentleman from Pittsburg (Mr. J. W. F. White) and also the remarks of the gentleman from Philadelphia (Mr. Gowen) applied, is simply this: "Malice shall not be presumed from the fact of publication." I did not mean, and I did not suppose that any lawyer would understand me as meaning, that the publication would not be evidence from which the jury might infer malice as they might from any other evidence in the case.

Mr. J. W. F. WHITE. May I interrupt the gentleman from Philadelphia?

Mr. DALLAS. Certainly.

Mr. J. W. F. WHITE. Suppose, then, in a prosecution on an article charging a person with having stolen a horse, the Commonwealth presents the article from the newspaper where the man is charged with being a horse-thief, without any other evidence whatever on the part of the Commonwealth, could the defendant be convicted?

Mr. DALLAS. If the jury, from the circumstances surrounding that publication, or even from the extravagance of the publication itself, could infer malice, the jury would be at liberty to do so.

But in order to remove all question on this point, for I do not desire that my amendment shall be defeated by misapprehension of its intent, I propose now to modify it by adding at the end the single word "alone;" and if it is not in order to do so now, I give notice that I will do so at the proper time. It will then read "and malice shall not be presumed from the fact of publication alone." You can give to the fact of publication all the weight you please on the subject of malice; but it will prevent the court from telling a jury absolutely that because that

article which upon its face contains libelous matter was published, therefore they cannot inquire into the fact of malice, that the court shall take that fact from them. I want the section in the Bill of Rights so modified, using the language of my friend from Bucks, (Mr. Lear,) that we can leave this matter of malice to go to the jury to be determined by them as all other matters are determined. That is the whole scope of the argument on this point, and I think I have answered every objection to my amendment.

Mr. SIMPSON. I would suggest that the same effect would be secured by inserting the word "mere" before "fact," making the clause read, "malice shall not be presumed from the mere fact of publication."

Mr. DALLAS. I prefer the other expression.

The CHAIRMAN. The question is on the amendment of the gentleman from Bucks, (Mr. Lear,) to the amendment of the gentleman from Philadelphia.

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs upon the amendment of the gentleman from Philadelphia (Mr. Dallas.)

Mr. SIMPSON. Let it be read.

The CLERK read the amendment, to strike out the third sentence of the section down to and including the word "evidence," and insert:

"All papers relating to the conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, shall be privileged; and no recovery or conviction shall be had or sustained in any suit or prosecution, civil or criminal, for the publication thereof, except where such paper shall have been maliciously published; and malice shall not be presumed from the fact of publication alone."

On the question of agreeing to the amendment a division was called for, which resulted twenty-eight in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. W. H. SMITH. I propose to amend by striking out the section and inserting:

"In all civil or criminal prosecutions for libel the truth may be given in evidence, as well as the sources of information on which the alleged libel may be based. And if it shall appear to the jury

that the publication charged as libellous be true, or that it was based on reliable information, was not inspired by malice, and was published for good motives and justifiable ends, the defendant shall be acquitted."

I am not going to take up time on this question; I said all I had to say about it the other day, on a proposition pretty nearly like this. It was then said that this proposition was not treated on its merits because other questions interfered with it. I now desire to have a direct vote of the Convention upon this amendment, whatever that vote may be.

The amendment was rejected.

Mr. J. W. F. WHITE. I now offer the amendment that I read a short time ago, to strike out the third sentence down to and including the word "evidence" and insert:

"In prosecutions for libel the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libellous is true, was proper for public information, and was published with good motives, it shall be a sufficient defense."

Mr. Chairman, let the Clerk read the section as it would be if amended.

The CLERK read as follows:

"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 libel the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libellous is true, was proper for public information, and was published with good motives, it shall be a sufficient defence; 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."

On the question of agreeing to the amendment a division was called for, which resulted twenty-four in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The CHAIRMAN. The question recurs on the section.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

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SECTION 8. That the people shall be secure in their persons, houses, papers and possessions 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.

Mr. KAINE. I would like to ask the chairman of the Committee on the Declaration of Rights what the necessity was for adding those last five words, "subscribed to by the affiant." They are not in the old Constitution.

Mr. MACCONNELL. That addition was made by the Committee on the Declaration of Rights from information that we received of a practice prevailing very extensively in the city of Philadelphia amongst the aldermen. It was represented that these aldermen receive information against persons, charging them with crime, verbally, and do not reduce their statement to writing and do not, if so reduced, require them to be signed by the prosecutor after being made. It was to correct that practice that these five words were adopted.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

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.

The section was agreed to.

The CLERK read the next section as follows:

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 offence 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.

Mr. STEWART. I offer the following amendment: Strike out in the fifth and sixth lines the words, "no person shall for the same offence be twice put in jeopardy of life or limb," and insert:

"In all cases where there has been a final verdict of acquittal or conviction upon an adequate indictment, the defendant shall not again be proceeded against criminally for the same offence."

Mr. Chairman, I wish simply to call the attention of the committee to what seems to me to be a defect in our present Constitution in this regard. The maxim of the common law was that the life of a man should not be twice put in jeopardy for the same offence. It may perhaps have been the intention of the framers of our Constitution to express the same idea in its Bill of Rights; but it was expressed somewhat differently from the common law maxim, and it has been construed to mean something else than was generally understood by the common law rule.

It has been decided in the State of Pennsylvania repeatedly, that if a man be on trial for a capital offense, and if the jury be discharged for any other cause than the act of God or overshadowing necessity, the defendant can plead that in bar on a second trial. That I understand to be the law as it is in Pennsylvania today. There are several cases in the books in which it has been thus decided. The purpose of the amendment is to correct this so that a defendant shall not be allowed to plead that in bar on a second trial, where, after a full consideration of his case, the jury has been discharged without arriving at a verdict. The amendment proposes all that ought to be contained in the Bill of Rights, that where a man has been tried upon an adequate indictment and a final verdict has been reached, either of acquittal or conviction, that shall be the conclusion of that case, and that he shall not again be put in jeopardy.

The clause in the present Bill of Rights has been construed to mean that a man cannot be twice put in jeopardy of a verdict. What we want to accomplish is to prevent a man from being twice put in

jeopardy, not of a verdict but of a conviction, and the amendment I have offered is in the language of the Supreme Court as it construes the common law maxim to mean. That is the amendment I propose. I offer it to the consideration of the committee. I think it is proper.

The amendment was agreed to, there being on a division, ayes thirty-four; noes thirty-three.

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

Mr. KAINE. In lines seven and eight I move to strike out the words, "and without the necessity for such taking being first ascertained by a jury;" in the ninth line to strike out the word "first;" and also to strike out from the word "made" in the ninth line to the close of the section the words, "the fee simple of land so taken and applied shall remain in the owner subject to the use for which it was taken." There is embraced in this clause what we have already adopted in the article on railroads. I think we ought not to place this matter in the Bill of Rights. Let it be where the committee of the whole has already placed it. This section reads:

"No person shall for the same offence 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—"

That is the original section thus far, and then comes in the new matter:

"—and without the necessity for such taking being first ascertained by a jury, &c.,—"

And then again,

"The fee simple of land so taken and applied shall remain in the owner subject to the use for which it was taken."

In the tenth section of the article on railroads the committee have already adopted this provision, which applies to all corporations, and it will be put by the Committee on Revision and Adjustment in some appropriate place in the Constitution:

"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."

It is in language a little different, but it is the same matter in principle. I hope these words will be stricken out here.

Mr. ANDREW REED. Mr. Chairman: I trust that the first part of the amendment of the gentleman from Fayette will be adopted; that is in the seventh and eighth lines to strike out the words "and without the necessity for such taking being first ascertained by a jury."

The CHAIRMAN. Does the gentleman call for a division?

Mr. ANDREW REED. I call for a division; but before the vote is taken I desire for a moment to call the attention of the committee to that subject. I do not think the Committee on the Declaration of Rights has weighed the exact force and effect that this will have on the building of railroads. Take an instance that was alluded to by the gentleman from Venango (Mr. Dodd) in the discussion of the railroad question. Suppose some improvement company or other comes up and the present companies shall prescribe such rates of freight as to make it impossible for persons to send their products to market, what remedy have they? The only remedy they have is to build a new railroad. Now, I ask members of this committee when would they get a new railroad built if the new company could not take land for that purpose without first having the fact whether its taking was a necessity determined by a jury? You get into a county where the trial of causes is one, two, or three years back, and in view of the delays which interested parties would interpose, when could you get that question determined? I think if they are made to pay, as we have required in the railroad report, not only direct, but also consequential damages, (which I think should not be done, but we have so adopted it,) that will be a safeguard sufficient. If we have to go through the forms of a jury trial, and have a unanimous verdict before we can have it determined that the taking of a man's land is necessary to the public use, it practically takes away all the beneficial effect of building any railroad.

The CHAIRMAN. A division is demanded, and the question is on the first branch of the amendment.

Mr. LILLY. I think that amendment ought to prevail beyond all doubt. We in the eastern part of the State are probably not as well acquainted with the injury that will result from such a provision as this, as gentlemen from the interior

and western part of the State; but in my opinion it will tie up the hands of every corporation that contemplates any improvement designed to develop the resources of the State that now lie dormant. I sincerely trust, for the reasons which have been given by the gentleman from Mifflin and the gentleman from Fayette, and other reasons which must force themselves upon the minds of all thinking men, that the amendment will be adopted.

Mr. CORSON. I do not see any difficulty about this matter. The difficulty presented by the gentleman from Mifflin does not present itself to my mind at all. The language of the section is: "And without the necessity for such taking being first ascertained by a jury." That would not take two days. There is no occasion for a trial. You go into court and set forth that you are unable to agree with the owner of the land as to the damages, or you set forth that you are about to run a railroad through a certain part of a man's farm, and you ask the court to appoint a jury to ascertain the necessity for the taking of the land for that railroad. Now, how long would that take? It would take, perhaps, two or three days. Therefore there is no practical difficulty in the way. But it does seem to me that there is a necessity for just such a clause as this in the Constitution.

Mr. ANDREW REED. I should like to ask the gentleman a question, if he will allow me.

Mr. CORSON. Certainly.

Mr. ANDREW REED. What would be the practical result of a state of affairs of this kind: A railroad of one hundred miles is laid out and you have the use of the farms either on leases or right of way sustained, but on one man's property the jury find that there was no public necessity for the taking; how would that affect the whole road? Would it not stop it?

Mr. CORSON. Now, Mr. Chairman, the fact that a section reported by the Committee on Railroads contains some provision on the subject has nothing at all to do with this question before us. I do not think that this railroad business ought to come up every time we discuss a section which is reported by any of the several committees of this Convention. I do not think that railroads ought to be rung in our ears every time we get up here to speak. I have no special regard for railroads, and certainly have no prejudices against them. But, sir, this provision be-

longs right here. I believe that if the sections of this report which have been adopted so promptly, because they were in the old Constitution, had originated with this committee, not one single one of the propositions contained in the Bill of Rights would have been adopted by this Convention. [Laughter.] It seems to me, if you want to kill any good measure, it is only necessary to have it reported to this Convention by a committee, and it will be surely voted down. If you want a matter to succeed, get a committee to report against it and some one to offer it as an amendment in Convention. The Convention seems to go upon the theory that every committee which has acted since the formation of the committees by the President is composed of a lot of blockheads who were not competent to consider any question which was referred to them, and that what they did consider and report to this Convention was nonsense and ought to be rejected.

Mr. BUCKALEW. I suppose the committee means in this case a jury of view.

Mr. CORSON. Yes, sir.

Mr. BUCKALEW. Then those words "a jury of view" ought certainly to be inserted in the section. The law now requires that the viewing jury should fix the assessment.

Mr. CORSON. Of course what is remarked by the gentleman from Columbia expresses the idea of the committee. It may be possible that there is a defect in the expression and that might be corrected; but certainly the idea which the committee intended to convey and to incorporate in this section is a good one and ought to be preserved. The section ought not to fail because it is new in any essential particular; and that it is new is perhaps the only thing that endangers its success before this committee of the whole. I have no objection, and I suppose that the chairman of our committee has no objection, to the insertion of the words "jury of view." We certainly did not contemplate a trial by jury in court.

Mr. CORBETT. I hope this amendment will prevail. In the western part of the State the effect of this provision would be to delay the construction of railroads very materially. Our terms of court are at considerable intervals, and viewers cannot make reports to the term at which they are appointed. The matter will necessarily go over from three to four months in many instances. I can see no good reason why a railroad company, if it secures the

damages or pays them, should be prevented from going on, taking possession of the ground, and proceeding with the work. The damages can be as well ascertained after it takes possession of the property as before, and of course it would be required to give security before it proceeds, by bond or otherwise. I see no necessity for this provision. I do not see that it protects the rights of the owners of the fee simple. Certainly if damages be secured to them, they are in a position in which they will not lose. I hope, therefore, that this amendment will be agreed to.

Mr. MACCONNELL. I will state some of the grounds on which the committee inserted the first clause which the amendment of the gentleman from Fayette proposes to strike out. We supposed that in regard to ground for the road track of railroads there would be no difficulty. There the necessity for the taking would be so manifest that there could be no difficulty in ascertaining it. But railroads, especially in the west—I cannot speak for the east—do not confine themselves to that. We have a case in our neighborhood where one of the railroad companies has undertaken to get up cattle yards. It is understood that they have bought some six hundred or eight hundred acres of ground for that purpose. But they were not satisfied with that. There was an old man who owned what was called the four hundred acre tract. He had, as I understand, in the neighborhood of four hundred acres lying alongside of this ground. They wanted to get that old gentleman to sell it to them. He declined to do it. They then made their application to the court to have it condemned and the amount of damages to be paid to be ascertained by the court. That was done; and as it is understood out there, the railroad company have now something over a thousand acres for that purpose.

This provision was intended to strike at things of that kind, that a railroad should not be permitted to set up that it is necessary for its purposes to have a four hundred acre tract of land and take it from the owner, *volens volens*, at such rate as a jury may choose to give him. That is what we intended by this clause, that in such cases the necessity for the taking should be ascertained by a jury. I suppose that it may perhaps in some cases produce delay; but I think the hardships on the other side are to be taken into consideration as well as those on the side of the railroad, that the rights of the

people should have some consideration as well as the rights of railroads. Those are about the reasons, I think, that induced the committee to report this clause.

Mr. NILES. I desire to occupy the time of the committee for but a moment in calling their attention to what will be the practical effect of the adoption of this section as reported by the committee, as I understand it.

I do not pretend to be familiar with the railroad law, but as I understand it, it is this: After the court appoints viewers, they go upon the ground and they make their report, and if the landowner is dissatisfied with the report of the viewers, he files his appeal in court, an issue is directed, and the trial proceeds as in other cases. Now, what will be the effect of the adoption of the proposition of the committee? It will most effectually prevent the building of any new railroads. I am not a railroad man, though I live in a section of the State that would be very glad to be cursed with a few more railroads than we have to-day.

We tried to build a little road in my county three or four years ago, appeals were taken, and they are undetermined yet, for the reason that our lists are so far behind that these appeals have not been reached, for the reason that the trials have been prevented because many older causes are ahead of them on the list. Now if this report is adopted, after the appeal is taken and issue joined and they go upon the list, no road can be opened until those causes are all disposed of in due course of law; and in many counties of this Commonwealth we have heard that the trial lists are three or four years behind. That complaint has come up to us from all over the Commonwealth, that the lists are so burdened with old causes that new ones are not reached under four years.

Now the practical effect of the adoption of the change proposed by the committee would be this: In all communities where there are persons opposed to improvements, every artifice of the law would be used to prevent the extension of improvements of this kind. It would enable one man to play the "dog in the manger" and prevent the development of his own country. I hope we shall sustain this amendment and adopt the article as we have had it heretofore.

Mr. CUYLER. Mr. Chairman: The case put by the chairman of the committee (Mr. MacConnell) is a case that has abun-

dant remedy in the law now, and always has had. A corporation can have no right to take property except for the purposes of its franchise. It has, to be sure, a large discretion on that subject; but if the discretion be wantonly or unreasonably exercised, there is a controlling power in the courts, and a court of equity will interfere to restrain a corporation from taking lands that are not really and legitimately necessary on a fair view of the case for the execution of the franchise; and on a proper demand of issues, the questions of fact may even go to a jury for determination. There is an abundant remedy now, and I have never heard of a complaint of any deficient remedy on the subject, as it stands now under the existing law. I see nothing to be gained and a great deal to be lost by tinkering at it.

The CHAIRMAN. The question is on the first division of the amendment of the gentleman from Fayette (Mr. Kaine.)

The division was agreed to.

The CHAIRMAN. The question now is on the second division.

Mr. HARRY WHITE. Mr. Chairman: I rise to a privileged question. I move to reconsider the vote on the amendment just now adopted, offered by the delegate from Franklin (Mr. Stewart.)

Mr. Kaine. I submit that the gentleman is out of order. There is a question pending undisposed of.

Mr. HARRY WHITE. If the delegate will be still a moment, I wish to ascertain whether there is a question pending before the committee.

SEVERAL DELEGATES. Certainly.

The CHAIRMAN. An amendment is pending.

Mr. HARRY WHITE. Very well.

The CHAIRMAN. The question is on the second division of the amendment.

Mr. T. H. B. PATTERSON. Let it be read.

The CLERK. The second division is to strike out the words in the ninth and tenth lines, "the fee simple of land so taken and applied shall remain in the owner, subject to the use for which it was taken."

Mr. CORSON. I called for a division on the first vote. We have not had that. Before the Chair announced it, after the vote was taken, I called for a division.

The CHAIRMAN. The Chair did not hear it.

Mr. CORSON. I suppose the Chair did not hear it.

Mr. D. N. WHITE. I hope the vote will be taken again; nobody understood it.

The CHAIRMAN. The sense of the committee will be taken again on the first proposition, which will be read.

The CLERK. The first division is to strike out in the seventh and eighth lines, "and without the necessity for such taking being first ascertained by a jury;" and in the ninth line the word "first."

Mr. J. R. READ. Do I understand that the word "first," in the ninth line, is included in the first division as asked for by the gentleman from Mifflin? I understood not.

The CHAIRMAN. That will not be included.

The first division of the amendment was agreed to.

Mr. J. R. READ. Now I ask for a division of the second branch of the amendment; that is, that the vote shall be taken on the striking out the word "first" before the vote is taken on the other proposition.

The CHAIRMAN. The question can be so divided.

Mr. CUYLER. Mr. Chairman: What are we to gain by altering what has long been the rule of law, and has worked no injury that I am aware of? Leave in the word "first," and after the word "made" insert the words "or secured," and you will leave the law as it is. If it be in order to amend this division in that way I move thus to amend it, leaving in the word "first" and adding the words "or secured" after "made."

Mr. KANE. I am willing to accept that modification.

Mr. CUYLER. The gentleman from Fayette accepts that as a modification of his amendment, I understand.

Mr. J. R. READ. Then I ask for a vote on that division.

The CHAIRMAN. This division of the amendment as now modified will be read.

The CLERK. This branch of the amendment is after the word "made" to insert the words "or secured," so as to read "and without just compensation being first made or secured."

This division of the amendment was agreed to.

The CHAIRMAN. The remaining division will now be read,

The CLERK. It is proposed to strike out the following words at the close of the section: "The fee simple of land so taken and applied shall remain in the

owner, subject to the use for which it was taken."

Mr. BUCKALEW. I take it the committee will not overlook the fact that property is often taken, not for the purpose of highways and therefore possibly for a temporary use to the public, but taken for permanent improvements. Take, for instance, the case of land appropriated for a public park; it is not to be expected that the land will ever revert back to the party from whom it was taken, and if the public use of it were to be abandoned years hence, it might be a very difficult thing to find out who the owner was to whom it should revert. This provision might apply to land taken for railroad purposes or ordinary road purposes, but it would not be suited to a great many cases where property may be taken under the right of eminent domain for public use. As the law is well settled and undisputed in the State that in the case of the vacation of highways the land reverts to the adjoining land-owners, I think this provision had better be omitted here.

Mr. CUYLER. I quite agree that it ought to be omitted. The rule of law as I understand it now is this: Whatever estate is taken in the first instance and paid for belongs to the party that takes it. For example, if a fee is needed and a fee is taken and paid for, on what earthly reason should the property ever revert again to the grantor? In the case of *Haldeman vs. The Pennsylvania Railroad Company*, that question was discussed and finally settled—settled that the Commonwealth on the line of her public works had taken a fee, and that a fee passed to the Commonwealth and to those who afterwards were her grantees. And such I suppose to be the reasonable rule.

To put this in here will lead to another source of confusion. Sometimes the particular user, while of the same general nature with that had before, is in many respects modified. A canal may be filled up and a railroad placed upon it, for example. Confusion would arise as to whether the change of the user did not involve a reversion under such a clause as this, and require that it should be paid for again. The Supreme Court has settled the rule on that subject, and we have now a good, well-settled rule of law. I see no advantage in disturbing it. Strike this clause out and leave the law as it is, and that position I think a very satisfactory one.



Mr. CAMPBELL. I move to amend by striking out the words in the ninth and tenth lines and inserting:

"The fee of the land taken for railroad tracks without the consent of the owners thereof shall remain in such owners, subject to the use for which it was taken."

Mr. KANE. We have that already in.

Mr. CAMPBELL. That is in some Constitutions already. One of the western States has that provision in its Constitution, and I offer it as an amendment.

Mr. CUYLER. This is a repetition of western Constitutions and the debates in western Conventions. More crude ideas have been developed in western States and inveigled into this body than are at all useful.

Mr. KANE. I will go as far as any member of this Convention to limit corporations in the right to take private property for public use; but I thought we had secured about all that was required when we adopted the tenth section in the article on railroads:

"All municipal, railroad, canal or other corporations and individuals shall be liable"—

This embraces every imaginable person—

—"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."

Mr. MACCONNELL. That does not touch the fee simple.

Mr. EDWARDS. I wish to ask the gentleman from Fayette a question in relation to opening public highways for cities. What becomes of the land when you come to vacate those highways? These words which he proposes to strike out should remain in to apply to that case, so that the property owners who abut on the highway should come into possession of the land.

Mr. KANE. That is the law now.

Mr. EDWARDS. It is not in the Constitution.

The CHAIRMAN. The question is on the amendment of the gentleman from Fayette to strike out the words indicated.

Mr. LILLY. Is not the question on the amendment of the gentleman from Philadelphia (Mr. Campbell?)

The CHAIRMAN. That is out of order at this time. The question is on the amend-

ment of the gentleman from Fayette (Mr. Kane) to strike out the words beginning "the fee simple."

The amendment was agreed to.

Mr. HARRY WHITE. I now rise to my privileged question.

SEVERAL DELEGATES. Let us get through this section.

The CHAIRMAN. The Chair will entertain a privileged question.

Mr. HARRY WHITE. I move to reconsider the vote by which the amendment of the delegate from Franklin (Mr. Stewart) was adopted to this section.

The CHAIRMAN. The motion only is privileged. The consideration of it will come up when the other matter is through. The motion to reconsider will be entered.

Mr. CAMPBELL. I move to amend the section by adding to it:

"The fee of lands taken for railroad tracks, without the consent of the owners thereof, shall remain in such owners subject to the use for which it was taken."

Mr. CUYLER. I hope that amendment will not prevail because I can perceive no earthly reason for it.

Mr. COCHRAN. Mr. Chairman: It is a mistake to suppose that this matter is covered by anything that was adopted in the report of the Committee on Railroads. Anything that is in the report of that committee has nothing to do with the determination of the question of the fee simple of land. What this committee have to determine here and now is whether they will establish the principle hereafter in the Constitution of this State that in the incorporation of companies of the character mentioned in the amendment, the fee simple shall remain in the owner and that only the easement shall pass to the corporation. I see no reason why that should not be incorporated in the Constitution and established as a permanent rule.

Mr. DE FRANCE. I wish to say just a word about this matter. The right of eminent domain has extended, as I understand, to taking the land of the citizens through our county and all along the line of the Erie canal. That canal is now dispensed with and the State has sold it out through men's farms. It was done by the State, as I understand, and it has claimed the right, under the law of eminent domain, to take absolutely the whole of the land of any person. I do not think the State, or any creature of the State, ought to have the right to do that.

Mr. D. W. PATTERSON. I move that the committee rise, report progress, and ask leave to sit again.

The motion was agreed to; and the President *pro tem* having resumed the chair, the Chairman (Mr. Bigler) reported that the committee of the whole had had under consideration the article (No. 18)

reported by the Committee on the Declaration of Rights and instructed him to report progress and ask leave to sit again.

Leave was granted to the committee of the whole to sit again to-morrow.

On motion of Mr. J. R. Read (at 3 o'clock and one minute P. M.) the Convention adjourned.

# ONE HUNDRED AND SIXTH DAY.

FRIDAY, May 23, 1873.

The Convention met at nine and a half o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. J. W. Curry.

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

## NEW MEMBER.

Mr. LANDIS. Mr. President: I perceive that Mr. Samuel Calvin, of Blair, elected to fill the vacancy caused by the death of Mr. M'Allister, is on the floor, and I suggest that the oath of office be administered to him.

The PRESIDENT *pro tem.* The gentleman will step to the desk.

The affirmation to support the Constitution of the United States, and perform his duty as a member of the Convention with fidelity, was administered to Mr. Calvin, and he took his seat.

## CORRECTION.

Mr. DODD. I desire at this time, Mr. President, if the Convention will permit me, to make a personal explanation.

The PRESIDENT *pro tem.* The gentleman from Venango asks leave to make, at this time, a personal explanation. Shall he have leave?

Leave was granted.

Mr. DODD. I find on page 582 of the fourth volume of the Debates, that in answer to an interrogatory of Mr. Cuyler I am reported to have said:

"The name of Barclay was on the office and the name of Moon, and a third person whose name I do not now recall."

The Reporter misunderstood me. I said nothing about any name being upon any office. During the course of my remarks I said something about the names of these gentlemen being used in certain charters; and the reporter evidently misunderstood my remark. I have risen merely to make this correction.

## PERSONAL EXPLANATION.

Mr. BOYD. Mr. President: I rise to a personal matter.

The PRESIDENT *pro tem.* The delegate from Montgomery rises to a personal explanation. Shall he have leave to proceed?

Leave was granted.

Mr. BOYD. I desire to state that I have been absent during the previous portion of this week in consequence of the death and funeral of a friend and a member of our bar for forty-five years, Daniel H. Mulvaney, with whom I studied law, and also because of pressing and unavoidable engagements in our court. I now ask unanimous consent, if that is necessary, to enable me to record my vote upon the subject of the pay to members that was up yesterday and voted upon.

The PRESIDENT *pro tem.* The delegate from Montgomery asks unanimous leave to record his vote on the question of the pay of members which was voted upon yesterday. Shall he have leave? By the rule of the Convention it requires unanimous leave.

SEVERAL DELEGATES objected.

Mr. LILLY. I suggest that the gentleman pay his fees which he made this week into the fund out of which the rest of us are paid.

Mr. BROOMALL. I suggest that the gentleman from Montgomery will accomplish the object by stating how he would have voted yesterday if he were here.

Mr. BOYD. I would have voted "no." I should have voted against any allowance of pay over \$1,000.

## LEAVES OF ABSENCE.

Mr. DUNNING asked and obtained leave of absence for himself for two days from to-day.

Mr. ANDREWS asked and obtained leave of absence for Mr. M'Murray until Wednesday next.

Mr. PATTON asked and obtained leave of absence for Mr. Elliott for a few days from to-day.

Mr. PARSONS asked and obtained leave of absence for Mr. Cronmiller for a few days from to-day.

Mr. HAZZARD asked and obtained leave of absence for Mr. M'Culloch for three days from to-day.

Mr. POWMAN asked and obtained leave of absence for Mr. Niles for a few days from to-day.

Mr. COCHRAN asked and obtained leave of absence for himself for part of to-day and all of Monday's session.

Mr. HARRY WHITE. I yesterday asked and obtained leave of absence for myself for to-day. I have not availed myself of it, and I now ask leave of absence for Monday because I cannot get back on that day without traveling on Sunday.

Leave was granted.

Mr. REYNOLDS asked and obtained leave of absence for himself for two days from Monday next.

Mr. CLARK asked and obtained leave of absence for himself for a part of to-day and for Monday.

#### SATURDAY SESSION.

Mr. MANTOR. I offer the following resolution :

*Resolved* That when this Convention adjourns to-day, it be to meet to-morrow at nine and a-half o'clock A. M.

On the question of proceeding to the second reading and consideration of the resolution, the yeas and nays were required by Mr. John M. Bailey and Mr. Corbett, and were as follow, viz :

#### YEAS.

Messrs. Achenbach, Baer, Bailly, (Perry,) Bailey, (Huntington,) Barclay, Bigler, Boyd, Calvin, Carter, Corbett, Corson, Craig, De France, Dodd, Edwards, Fulton, Guthrie, Hay, Hazzard, Horton, Kaine, Lawrence, MacConnell, M'CLean, Mantor, Minor, Mott, Patterson, T. H. B., Pughe, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Russell, Smith, Wm. H., Stewart, Struthers, Walker, Wherry and White, David N.—39.

#### NAYS.

Messrs. Addicks, Andrews, Baker, Bardsley, Black, Charles A., Bowman, Brodhead, Broomall, Brown, Church, Clark, Collins, Curry, Dunning, Funck, Gibson, Hall, Hemphill, Knight, Landis, Lear, Lilly, Long, M'Camant, Mann, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patton, Purman, Read, John R., Rooke, Ross, Sharpe, Simpson, Smith, Henry W., Stanton, Temple, Van Reed, Wetherill, J. M., White, Harry, White, J. W. F. and Woodward—45,

So the Convention refused to proceed to the second reading and consideration of the resolution.

ABSENT.—Messrs. Ainey, Alricks, Armstrong, Bannan, Bartholomew, Beebe, Bidle, Black, J. S., Buckalew, Campbell, Carey, Cassidy, Cochran, Cronmiller, Curtin, Cuyler, Dallas, Darlington, Davis, Elliott, Ellis, Ewing, Fell, Finney, Gilpin, Gowen, Green, Hanna, Harvey, Heverin, Howard, Hunsicker, Lamberton, Littleton, MacVeagh, M'Culloch, M'Murray, Metzger, Mitchell, Niles, Porter, Reynolds, Runk, Smith, H. G., Turrell, Wetherill, Jno. Price, Worrell, Wright and Meredith, *President*—49.

#### LIMITATION OF DEBATE.

Mr. S. A. PURVIANCE. I offer the following resolution :

*Resolved*, That from and after Monday next no delegate shall be allowed to speak on any one question more than five minutes, and no extension of time, in any case, shall be allowed ; and this resolution shall not be rescinded unless by a vote of two-thirds of all the members voting.

Mr. HARRY WHITE. I raise the point of order that the resolution must lie over. It is a new rule.

Mr. LAWRENCE. It is not in the nature of a standing rule.

The *PRESIDENT pro tem*. The Chair is of opinion it is not a rule, but a mere order.

The resolution was ordered to a second reading and was read the second time.

The *PRESIDENT pro tem*. The resolution is before the Convention.

Mr. WHERRY. It strikes me that if the President will consider for a moment he will see that this is in the nature of a rule, especially the latter clause, which says it shall not be repealed, except by a two-thirds vote. I want to know if the establishment of an order like that is not in the nature of a rule ?

The *PRESIDENT pro tem*. The Chair has decided it to be a mere order of the House.

Mr. BROOMALL. I would suggest to the mover of the resolution that he modify it so as to apply to the committee of the whole, at least for the present : That no delegate be allowed to speak on any one question more than five minutes in committee of the whole.

Mr. S. A. PURVIANCE. I cannot consent to that.

Mr. BROOMALL. Then I have doubts whether it applies to the committee of the

whole at all. Unless it is so expressed, it would not apply to the committee of the whole, but only to the Convention as such.

Mr. S. A. PURVIANCE. I designed to apply it to the committee of the whole as well as so the Convention in general.

Mr. BROOMALL. I am willing to vote for it if it is made to apply to the committee of the whole.

Mr. S. A. PURVIANCE. I will modify the resolution by adding "in committee of the whole and in Convention."

Mr. LILLY. I am afraid that five minutes is too short, and the consequence will be that on Monday or Tuesday next, in the middle of a discussion, a motion will be made that the committee rise in order that an opportunity may be had to rescind this resolution. Fearing that, I wish to make a compromise that will suit everybody. I therefore move to amend the resolution by inserting ten minutes instead of five.

The PRESIDENT *pro tem*. The question is on the amendment offered by the gentleman from Carbon (Mr. Lilly.)

Mr. CORSON. As the rule now is ten minutes, the object will be better accomplished by striking out all the first part of the resolution and thus leaving it so as to provide that there shall be no extension of time; and I suggest to the gentleman from Carbon to accept that. By the rule now, every member is allowed ten minutes. If he will move to strike out the first part of the resolution, that will leave it stand that there shall be no extension of time.

Mr. LILLY. I am perfectly willing to do that; I think it would be well to do that; but I am afraid, as I said before, if you agree to this five minute rule, before we meet on Tuesday morning next we shall have rescinded it.

Mr. STANTON. I do not see why the gentleman from Carbon should complain of the adoption of such a rule as this. He never talks over three minutes on any subject; and I think if he will allow this five minute rule to be applied in committee of the whole, we shall progress much faster with our business. I presume there will be considerable filibustering yet on this matter. We have something of that sort here every morning, and as there is an hour and a half left of the morning, I trust every gentleman will be allowed to filibuster as much as he pleases on this subject. [Laughter.]

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Carbon.

Mr. FUNCK. I ask for the reading of the resolution and amendment.

The CLERK read the resolution as modified as follows:

*Resolved*, That from and after Monday next no delegate shall be allowed to speak either in committee of the whole or in the Convention on any one question more than five minutes, and no extension of time in any case shall be allowed; and this resolution shall not be rescinded unless by a vote of two-thirds of all the members voting.

Mr. LILLY. My amendment is to strike out "five" and insert "ten."

The amendment was rejected.

Mr. HARRY WHITE. I understand—

Mr. BOYD. I move to lay the whole subject on the table.

The PRESIDENT *pro tem*. The delegate from Indiana (Mr. Harry White) is entitled to the floor.

Mr. HARRY WHITE. I rise for information. Do I understand that the resolution without the amendment is now before the Convention?

The PRESIDENT *pro tem*. The amendment was voted down.

Mr. HARRY WHITE. Very well. Now, may I inquire, does the Chair hold that this resolution requires a two-thirds vote or simply a majority for adoption? I call the attention of the Convention to the fact that this question of the time delegates shall occupy in speaking and the number of times they shall speak was a subject of considerable discussion before the Committee on Rules and was made the subject of a separate rule. Possibly the attention of the Chair was not directed to this point. You will observe that Rule No. 10 says: "No delegate shall speak more than twice on the same question without leave of the Convention." Now, I submit that if the number of times a delegate shall speak upon any question is the subject of a rule, the length of time that a delegate is to speak is equally the subject of a rule. I renew, then, the point of order that this resolution, under our rules, must lie over one day.

The PRESIDENT *pro tem*. Whatever opinion the present occupant of the Chair might have, he considers himself bound by the decision of the President of the Convention but a short time since on precisely the same question. His decision is regulated by that and controlled by it.

Mr. HARRY WHITE. Very well. Now, Mr. President, may I not address another inquiry which has not been decided by the regular President, and I know the present presiding officer will decide it under the rule. This is an alteration of our rules; and under the fortieth rule does it not require a two-thirds vote?

The PRESIDENT *pro tempore*. That question has not yet arisen.

Mr. HARRY WHITE. I ask now before the vote is taken.

The PRESIDENT *pro tem*. The Chair declines to answer until the question arises properly by the rule.

Mr. HARRY WHITE. Then one word. I hope and trust this resolution will not prevail. We are just on the eve of going out of committee of the whole. We have not had one article up yet on second reading. I do submit that while we are all impatient, and no gentleman moreso than I am, to get through and go home, (and I am satisfied we can get through by the first of July,) no Constitutional Convention ought to bind its hands by a rule like this before we have any experience of the conduct of speakers out of committee of the whole.

Mr. BIGLER. To my mind, Mr. President, this is a very clear question. I think the principle is settled that where the body parts with its power, where it puts upon itself restrictions, then that action becomes a rule. When the action is within the control of the majority of the body, then it is an order. Here is a proposition which cannot be disturbed except by a two-thirds vote; and that being a restriction upon the power of the body becomes a rule, and in my judgment ought not to be adopted.

Mr. WHERRY. It strikes me, Mr. President, that there is a rule underneath all the rules we have established, a fixed parliamentary rule as firmly established as the foundation of the universe, that the majority shall rule in all questions that are not excepted under the rules—restrictions which they have placed upon themselves. I hold that the majority of this Convention cannot put the Convention at the mercy of a minority of one-third.

The PRESIDENT *pro tempore*. The Chair has not decided that question. He declines to decide such a question until it arises.

Mr. COCHRAN. I move to amend by striking out and inserting—

Mr. BOYD. Is it now in order to move to postpone this subject for the present.

The PRESIDENT *pro tempore*. It is.

Mr. COCHRAN. Not until my amendment is read.

The PRESIDENT *pro tempore*. The amendment will be read.

The CLERK read as follows:

"That hereafter no extension of time shall be allowed to any speaker, either in committee of the whole or Convention; and that this resolution shall not be repealed without a vote of two-thirds of the members present in favor of the repeal."

The PRESIDENT *pro tem*. The delegate from Montgomery (Mr. Boyd) moves to postpone the further consideration of the subject.

Mr. COCHRAN. I should like to say one word before that is voted on.

Mr. BOYD. Is debate in order?

The PRESIDENT *pro tem*. It is. The amendment is before the House and debate on it is in order.

Mr. COCHRAN. I merely wish to say that I am not at all clear in my mind about the propriety of passing any resolution of this kind, yet I certainly do think that if it is passed it should not be to confine the time to less than ten minutes, and my object in offering this amendment is merely to change the time from five to ten minutes, and then to leave it to the judgment of the majority whether they will adopt it or not.

The PRESIDENT *pro tem*. The delegate from Montgomery moves to postpone the amendment, together with the original resolution, for the present.

On the motion to postpone, the yeas and nays were required by Mr. H. W. Smith and Mr. Newlin, and were as follows, viz:

#### YEAS.

Messrs. Addicks, Bailly, (Perry,) Bailey, (Huntingdon,) Bigler, Black, Charles A., Bowman, Boyd, Buckalew, Calvin, Clark, Cochran, Corson, Craig, Curry, Dallas, De France, Dodd, Fell, Gibson, Guthrie, Hay, Hemphill, Horton, Knight, Lamberton, Landis, Lear, M'Clellan, Minor, Newlin, Patterson, D. W., Read, John R., Rooke, Sharpe, Smith, H. G., Temple, Wetherill, J. M., Wherry, White, Harry, White, J. W. F., Woodward and Worrell—42.

#### NAYS.

Messrs. Achenbach, Andrews, Baer, Baker, Barclay, Bardsley, Brodhead, Broomall, Brown, Carter, Church, Collins, Corbett, Dunning, Edwards, Funck, Han-

na, Hazzard, Kaine, Lawrence, Lilly, Long, MacConnell, M'Camant, Mann, Mantor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Ross, Russell, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Struthers, Van Reed, Walker and White, David N.—51.

So the motion to postpone was not agreed to.

**ABSENT.**—Messrs. Ainey, Alricks, Armstrong, Bannan, Bartholomew, Beebe, Biddle, Black, J. S., Campbell, Carey, Cassidy, Cronmiller, Curtin, Cuyler, Darlington, Davis, Elliott, Ellis, Ewing, Finney, Fulton, Gilpin, Gowen, Green, Hall, Harvey, Heverin, Howard, Hunsicker, Littleton, MacVeagh, M'Culloch, M'Murray, Metzger, Niles, Runk, Turrell, Wetherill, Jno. Price, Wright and Meredith, *President*—40.

Mr. S. A. PURVIANCE. Upon consultation with many of the members I have come to the conclusion, so as to insure the passage of this resolution, to modify it by striking out "five" and inserting "ten."

The *PRESIDENT pro tem.* The resolution will be so modified.

Mr. COCHRAN. I withdraw my amendment.

Mr. WHERRY. I move to amend the resolution by striking out the last clause relative to a two-thirds vote.

The *PRESIDENT pro tem.* The question is on the motion of the delegate from Cumberland to strike out the words "unless by a vote of two-thirds of all the members voting."

The amendment was rejected, ayes fifteen, not a majority of a quorum.

Mr. BROOMALL. It seems to me that in many cases five minutes would be long enough; but there is occasionally a case in which ten minutes would not be long enough. I do not wish to make a motion, but I would suggest to those advocating this resolution, and I am one, that it should read somehow in this way: "That no delegate should speak," &c., "longer than five minutes if five members object, nor longer than ten minutes without the consent of two-thirds of the members present." ["No." "No."]

The *PRESIDENT pro tem.* The question is on the resolution.

Mr. HARRY WHITE and Mr. BOYD called for the yeas and nays.

Mr. CARTER. It is not understood.

Mr. LAWRENCE. Let the resolution be read as it has been modified.

The CLERK read as follows:

*Resolved*, That from and after Monday next no delegate shall be allowed to speak either in committee of the whole or in the Convention on any one question more than ten minutes; and no extension of time in any case shall be allowed; and this resolution shall not be rescinded unless by a vote of two-thirds of all the members voting.

Mr. WOODWARD. Mr. President: I rise for the purpose of opposing this resolution. I suppose it is destined to pass; but I should feel that I had not performed my full duty if I did not express the reasons why I am going to vote against it.

Mr. President, this is a deliberative body. The only body in which I know of a limitation upon deliberation is in Congress and other legislative bodies when they have appropriation bills containing a great number of items and particulars under consideration in committee of the whole. There the five minutes rule is applied and applied with good effect, because on the multitudinous and dissimilar subjects that come up in such bills but few men have anything to say, and it can be said in five minutes. I have told this Convention before what I heard Mr. Colfax say upon that class of questions, that he had heard the best speeches made in five minutes he had ever heard made in his life, and Mr. Colfax was a man of large experience, as we all know.

Now, sir, there is a class of questions to which these five minute speeches belong; but this body has nothing to do with appropriation bills. This is not a legislative body in any sense. Indeed we made a great mistake when we brought into this body a committee of the whole. This body has nothing to do with committees of the whole. In parliamentary law a committee of the whole is designed for exactly the class of bills to which I have alluded, appropriation bills; but in a body like this, where we have no appropriation bills, we have no occasion for a committee of the whole, and we never ought to have had a committee of the whole. This body is unique, and all its deliberations should have been in the Convention; but we interpolated this principle of a committee of the whole, and ever since we began our work we have been in committee of the whole. The only deliberation that this body have yet given to the work they were sent here

to perform has been in committee of the whole. In committee of the whole there is no previous question; there are no yeas and nays; and the consequence is that the committee of the whole has been very thin and lean all the while. You could not keep members here because you were in committee of the whole. If we had remained in convention and dispensed with this committee of the whole, there would have been no complaints such as existed last week about absentees and calls of the House, and none of those embarrassments. They have all grown out of the fact that we have had and still have committees of the whole. Committees of the whole are well enough in legislative bodies, but they have no place here.

Every moment of deliberation that this body has given to the subject of constitutional reform has been by the few members who have attended these committees of the whole, and not one single subject has yet been considered in the Convention. And now, sir, when we are approaching the time for considering the Constitution in the Convention, we are met with a proposition to limit debate to five minutes or at most to ten minutes; and gentlemen call that deliberation! I call it a cowardly skulking from our duties. We are just approaching the threshold of our duties in this body, and in this deliberative body that has to deal not with appropriation bills, but with the great principles of human liberty, with the foundations of civil government, gentlemen seriously stand up and propose, and I believe a majority of this body is going to vote, that the members of this body deliberating upon these fundamental and important questions shall be cut down to the time that legislative bodies give to their members upon the questions of appropriations for rivers and harbors, and what not. In its very best aspect that is this proposition; and, for one, I am going on the record against so monstrous a proposition. I should be glad if this Convention would vote it down as an insult to its understanding and to the people who sent us here. As yet we have not entered upon the real work which we were sent here to perform. If gentlemen propose to tie our hands and gag our mouths as we are about to enter upon it, I stand here for one to record my vote against so monstrous and insolent a proposition.

Mr. S. A. PURVIANCE. Mr. President: When I thought proper to submit the res-

olution which is now before this body, I scarcely expected from the distinguished delegate from Philadelphia, the use of such language as he has just uttered, that the members of this body were skulking cowardly in the discharge of their duties. Now, let me say to that gentleman that I have been in this Convention in this city, for ninety-four days almost consecutively in the discharge of my duties, and am anxious to abridge discussion and close our labors, and that so far as regards the attempted analogy between the committee of the whole in the House of Representatives of the United States and this body there is no analogy at all. When that body goes into committee of the whole, it is upon the state of the Union, and then gentlemen are permitted to speak upon any and every subject that they may desire. But, in a Convention like this, we are confined to the subject matter before the body and are not at liberty to go beyond that; and yet, sir, we have indulged that gentleman and other gentlemen for almost hours outside the subject matter legitimately under discussion. That gentleman has taken some hours here to answer in reference to the productiveness of the city of Philadelphia. Another gentleman, the delegate from Dauphin, (Mr. MacVeagh,) in the flight of his imagination, reared a tree of liberty upon which he placed the birds of the forest, the nightingale and the lark, and another gentleman, distinguished for his ability, from York (Mr. J. S. Black) came in and metamorphosed that tree in a speech of an hour or so by putting upon it the kite, the vulture and the buzzard. [Laughter.]

Sir, that has been the course of this Convention, and is that any evidence of deliberation upon the subject matters we were called here to consider? Certainly not. Therefore it is that I believe I have a right now to offer this resolution. I have abstained on every occasion in speaking to this body, from trespassing upon even the ten minute rule, and on no occasion but one have I occupied the full time allowed by that rule. By any fair calculation that we can make of the time that will be consumed under a ten minute rule between this and the time we ought to adjourn, it will carry us into next fall. Therefore I hope and trust that notwithstanding the language used by the distinguished gentleman from Philadelphia, at which I am astonished, there is no man here who will skulk from



the discharge of his duty in this respect, but that all will vote as they may think proper, regardless of the threat of that distinguished gentleman.

The *PRESIDENT pro tem.* On this question the yeas and nays have been called, and the Clerk will call the roll.

Mr. ADDICKS. Allow me to ask, are we voting on the main resolution now.

The *PRESIDENT pro tem.* On the main resolution.

The yeas and nays were as follow, viz:

Y E A S.

Messrs. Achenbach, Baer, Baker, Barclay, Bardsley, Brodhead, Broomall, Brown, Campbell, Carter, Church, Cochran, Collins, Corbett, Curry, De France, Dodd, Dunning, Edwards, Fulton, Funck, Guthrie, Hanna, Hazzard, Landis, Lawrence, Lilly, Littleton, Long, MacConnell, M'Camant, M'Clean, Mann, Mantor, Minor, Mitchell, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Struthers, Van Reed, Walker and White, David N.—59.

N A Y S.

Messrs. Addicks, Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Bigler, Black, Charles A., Bowman, Boyd, Buckalew, Calvin, Clark, Corson, Craig, Dallas, Ellis, Fell, Gibson, Hay, Hemphill, Horton, Kaine, Knight, Lamberton, Lear, Newlin, Patterson, D. W., Read, John R., Sharpe, Smith, H. G., Stewart, Temple, Wetherill, J. M., Wherry, White, Harry, White, J. W. F., Woodward and Worrell—36.

ABSENT. — Messrs. Ainey, Alricks, Armstrong, Bannan, Bartholomew, Beebe, Biddle, Black, J. S., Carey, Cassidy, Cronmiller, Curtin, Cuyler, Darlington, Davis, Elliott, Ewing, Finney, Gilpin, Gowen, Green, Hall, Harvey, Heverin, Howard, Hunsicker, MacVeagh, M'Culloch, M'Murray, Metzger, Mott, Niles, Runk, Turrell, Wetherill, Jno. Price, Wright and Meredith, *President*—38.

Mr. HARRY WHITE. Before the vote is announced I renew my point of order that it requires a two-thirds vote.

The *PRESIDENT pro tem.* I do not know that it would be proper for me to decide that point until I hear the result of the vote.

Mr. HARRY WHITE. Certainly. I merely wish to raise the point of order before the result is announced.

The *PRESIDENT pro tem.* The Chair will then make his decision.

Mr. HARRY WHITE. I merely wish to get the point before the Chair in time, so that if a two-thirds vote is not cast it may be understood that the question is not carried.

The result was announced: Yeas, fifty-nine; nays, thirty-six, as above.

The *PRESIDENT pro tem.* The Chair decides that two-thirds not having voted for the resolution, it falls.

AMENDMENTS TO RULES.

Mr. TEMPLE. I offer the following resolution:

*Resolved*, That the first business in order on each and every Friday shall be a resolution favoring a session of the Convention on the Saturday following. [Laughter.]

Mr. BROOMALL. I rise to a question of order. It is changing the rule and requires to lie over one day.

The *PRESIDENT pro tem.* It will lie over.

Mr. MANN. I offer the following resolution:

*Resolved*, That rule seven be, and is hereby, amended so as to read: "Original resolutions offered on Mondays only."

The *PRESIDENT pro tem.* This will lie over.

REPORTS OF COMMITTEES.

The *PRESIDENT pro tempore.* Reports of committees are now in order.

Mr. BUCKALEW. Mr. President: At a subsequent stage during the day I shall ask leave to make a report from the Committee on Suffrage, Election and Representation.

DECLARATION OF RIGHTS.

Mr. STANTON. I move that we go into committee of the whole on the article reported by the Committee on the Declaration of Rights.

The motion was agreed to.

The Convention accordingly resolved itself into committee of the whole, Mr. Bigler in the chair.

The CHAIRMAN. The committee of the whole have again referred to them the article reported by the Committee on the Declaration of Rights. The question is on the amendment of the gentleman from Philadelphia (Mr. Campbell) to the tenth section.

Mr. STRUTHERS. What is that amendment?

The CLERK. The amendment is to add to the tenth section: "The fee of lands taken for railroad tracks, without the consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken."

The amendment was rejected.

Mr. STRUTHERS. I would like to know what the proposition now is.

The CHAIRMAN. The Chair is about to entertain the motion of the gentleman from Indiana (Mr. Harry White) to reconsider the vote by which this section was amended yesterday on the motion of the gentleman from Franklin, (Mr. Stewart,) and the question will be stated by the Clerk.

The CLERK. It was moved to amend section ten by striking out the words "no person shall for the same offence be twice put in jeopardy of life or limb" and inserting the words: "In all cases where there has been a final verdict of acquittal or conviction upon an adequate indictment, the defendant shall not again be proceeded against criminally for the same offence." The amendment was agreed to; and it is now moved to reconsider the vote by which the amendment was adopted.

The motion to reconsider was agreed to.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Franklin (Mr. Stewart.)

Mr. HARRY WHITE. I have just one observation to make in this connection. I call the attention of the delegates present to the fact that this is an exceedingly important innovation. It is hardly necessary for me to add the observation that every innovation is not reform. Delegates will understand that this amendment proposes to strike out the words in the present Bill of Rights, "no person shall for the same offence be twice put in jeopardy of life or limb," and insert: "In all cases where there has been a final verdict of acquittal or conviction upon an adequate indictment, the defendant shall not again be proceeded against criminally for the same offence."

It is proposed to strike out words which have been inserted in our Constitution from its formation, and which are the precise words to be found in the Constitution of the United States, and to substitute in lieu thereof the words which I have just read. The change seems to be immaterial, but it is exceedingly material. The

language found in our present Constitution, that "no person shall for the same offence be twice put in jeopardy of life or limb," has received an interpretation in the highest courts of this Commonwealth, with which every member of the profession is familiar. There is no difficulty whatever about any case which is not a capital case. At any time if the jury is unable to agree, the court trying the case discharge the jury and re-arraign the defendant on second trial. The rule of Pennsylvania as to capital cases is that a jury cannot be separated merely because they cannot agree, but the court trying an indictment for murder has full and ample power over the proceedings in the premises. Where from sickness or death, where from the act of Providence, where from the consent of the parties, where from any malfeasance of the defendant or his counsel for tampering with a jury, or any of those things which interfere substantially with the rendition of a true verdict or proper deliberation which makes a final decision impossible by the jury trying the case, the court trying it has the power to re-arraign and re-try the defendant. I submit that we do not want to change a rule which in that respect has been so well understood and so well adjudicated in Pennsylvania. It may be said that it is unwise, where a party has been tried fairly and the jury are unable to agree in a capital case, that he should go free and not be tried again. I submit, Mr. Chairman, that where the defendant has been tried fairly, where no impropriety has been practiced in the empanelling or in the summoning of the jury, where there has been no effort to detain the witnesses by the defendant, where there has been no improper conduct on the part of the jury, and where the defendant has not consented to the discharge of the jury, and the jury after proper delay are unable to agree, that man should go free. I submit then that there is no reason why the rule as interpreted by the highest court of Pennsylvania should be changed in this regard.

There is another objection to this. Observe the language, delegates. "In all cases where there has been a final verdict of acquittal or conviction upon an adequate indictment." An "adequate indictment" opens a door which changes the rule in other cases. Imagine, for a moment, a case of the conviction of a defendant upon an insufficient indictment, and a motion is made in arrest of

judgment, and that motion in arrest of judgment is sustained. I submit that under this provision of our Constitution, that defendant could not be again tried. It changes a rule which is thoroughly familiar to the profession of the State, and the change is not called for by any present evil. I submit that we ought to retain the provision in the old Constitution which we all so well understand.

Mr. ELLIS. I wish to add only one objection to those urged by the gentleman from Indiana in opposition to the adoption of this amendment. I take it under the language of this amendment, where a man has been convicted by a jury, that takes away from the court the power they now have of granting a new trial. In cases where injustice has been done, where evidence has been improperly admitted, or where the ruling of the court has been wrong on the points raised in the trial, this amendment, if it stands as now proposed, will take away from the court that salutary right which they now possess, of granting a new trial, and allowing the case to be re-heard in the court.

I think that is a very serious objection to the adoption of the amendment as now proposed.

I entirely agree with the gentleman from Indiana, that the present provision in the Constitution, with its judicial determinations and judicial construction, is entirely competent to secure to the criminal charged every constitutional right that he should have. Where a man is improperly tried, for instance, where the court is not competent to try the case under this amendment, he never could be tried in any court afterwards. Although it be a mis-trial, the court having no jurisdiction of the case, by the mere formula of going through the trial and a verdict by a jury, the amendment says he cannot be proceeded against again.

There are two objections. A criminal may, under this amendment, go scot-free when he ought to be punished. Another objection is, that an innocent man may be punished when, in fact, he ought to have a new trial and be acquitted.

Mr. LANDIS. Mr. Chairman: I desire to say a word or two before the vote is taken. I was engaged yesterday when the amendment was submitted, and owing to the fact that I did not hear distinctly the reading of it, by the Clerk, I did not vote upon it. Discovering afterwards, however, that the committee of the whole

had adopted the amendment, I examined it and I discovered that the effect of the amendment would be to unsettle the law of the State of Pennsylvania in this particular.

The law in this connection has been settled from the foundation of the Commonwealth. The section as reported is in the language of the Federal Constitution, and the amendment therefore, without accomplishing any reform, is an innovation which can accomplish no good. The law of Pennsylvania is this: A judge cannot discharge a jury in a trial for homicide because of the failure of the jury to agree. That furnishes no sufficient reason for the discharge of the jury. He, however, may discharge a jury in such a prosecution where there exists an absolute and an overpowering necessity, but in the absence of that necessity he cannot discharge it.

If I understand the position of the gentleman who offered the amendment, he asks that the present Constitution be amended, because, says he, a defendant who may be discharged by a judge because a jury cannot agree, can therefore plead on the second trial "once in jeopardy," and therefore be discharged. If the judge trying the cause chooses to exercise what he deems a rightful discretion, or, to put it stronger, if he chooses to do that which is against the settled law of the State, is there any reason why he who is the defendant in the prosecution should not have the benefit of the plea on a second trial?

I should like to call the attention of the committee to what is said in connection with this very point by Chief Justice Gibson, in a leading case on this subject in Pennsylvania. He says:

"I take it on grounds of reason as well as of authority, then, that a prisoner, of whom a jury have been discharged before verdict given, may, by pleading the circumstances in bar of another trial, appeal from the order of the court before which he stood, to the highest tribunal in the land. Nor do I understand how he shall be said not to have been in jeopardy before the jury have returned a verdict of acquittal. In the legal, as well as the popular sense, he is in jeopardy the instant he is called to stand on his defence; for from that instant, every movement of the Commonwealth is an attack on his life; and it is to serve him in the hour of his utmost need that the law humanely adds to the joinder of the issue a prayer

for safe deliverance. The argument must therefore be, that he is not put out of jeopardy unless by a verdict of acquittal; and that to try him a second time, having remained in jeopardy all along, is not to put him in jeopardy twice. In this aspect it must be obvious that the argument is an assumption of the whole ground in dispute. *If the prisoner has been illegally deprived of the means of deliverance from jeopardy, every dictate of justice requires that he be placed on ground as favorable as he could possibly have attained by the most fortunate determination of the chances.*"

*Commonwealth vs. Clue*, 3 Rawle's Reports, 501.

"So does it appear that it is the intention of the law to allow this humane provision. He is entitled to it, for by a discharge of the jury by the judge because they fail to agree he cannot be put in as favorable a position afterwards as he was before. The discharge of a jury under such circumstances is depriving a prisoner "illegally of the means of deliverance."

When the gentleman by his amendment seeks to have the prisoner tried a second time on the same indictment, when the first jury has been discharged by the court for any reason, it may be replied that if the jury were discharged because they could not agree, the disagreement suggests that there was doubt about the defendant's guilt, and doubt ordinarily operates to his benefit and to his acquittal. So that even if the plea does occasionally prevail, there is that idea or principle to compensate for his discharge.

If an absolute necessity exists for the discharge of a jury, such as some act of God that precludes a final determination at the time, then on a second trial the plea is ineffectual. Sickness from deprivation of food was held by Judge Gibson in *Commonwealth vs. Clue*, 3 Rawle, 498, when such illness could be removed by supplying the jury with proper refreshment, to be no such absolute necessity as demanded the discharge of the jury. Or if the defendant consents to the discharge of the jury, he has waived his right to avail himself of the plea, though it is very questionable whether the consent of the prisoner should be obtained in a matter so closely affecting and imperilling his own life.

In the prosecution of indictments for crimes of a less grade than capital ones,

I understand that the discharge of a jury under any circumstances does not prevent a second trial of the defendant. This is held in *Commonwealth vs. McCreary*, 5 Casey, 323.

The law of the State, therefore, is well settled, and it seems to me to be unwise to disturb it by incorporating new provisions into the Bill of Rights which will only create uncertainty, require fresh adjudication, and accomplish no good. Let us, therefore, vote down the proposed amendment and report the section in its present shape.

Mr. TEMPLE. There is one other reason that has not been stated why, in my judgment, this amendment should not be adopted; and that is that under the amendment as offered, after a defendant has been once fairly tried and acquitted in a criminal court upon any charge, whether it is homicide or misdemeanor, if it should be determined within two or three years or any number of years within the statute of limitations that the indictment was inadequate that defendant, though the jury had passed upon it and he had been discharged from court, could be re-arrested and re-tried for the same offence. That has not been the custom of Pennsylvania, and in my judgment the people do not expect such a custom to be established. I suppose the gentleman who offered this amendment did not intend it to cover that class of cases; but it certainly would cover those cases, if I understand the wording of the amendment. It says that the indictment shall be adequate, and that if there is a final verdict either of acquittal or conviction upon an adequate indictment, then a man shall not be rearrested and retried; otherwise, if it shall be determined that the indictment is inadequate at any time subsequent to that, the man can be re-arrested and retried.

Mr. STEWART. I propose to amend the amendment which was offered by me, by inserting the word "capital" after "all," so as to read, "in all capital cases where there has been a final verdict of acquittal or conviction," &c.

Mr. HARRY WHITE. I submit that the amendment cannot be modified after the motion has been made to reconsider.

The CHAIRMAN. The delegate can move to amend his amendment, but he cannot modify it.

Mr. STEWART. Mr. Chairman: This subject presents two distinct inquiries. The first one is, is the provision in our present

Constitution defective? The next is, if defective, is the remedy that I have proposed a proper one? If I understand the law of Pennsylvania to-day, it is this: If a man has been indicted for a capital offense, a jury empanelled and sworn, and that jury afterwards discharged by the court for any other reason than because of an act of God or an overshadowing necessity, the defendant can plead that in bar of a second trial. Now, I submit to all candid minds, if that be the law of Pennsylvania to-day, that such law is defective. The gentleman from Blair has correctly stated the law.

Mr. CUYLER. Will the gentleman pardon an inquiry?

Mr. STEWART. Certainly.

Mr. CUYLER. Does he understand it to be the law of Pennsylvania to-day that any tribunal can review the exercise of the discretion of the judge in discharging that jury? Is not the bare fact that the judge does discharge the jury conclusive for putting the man on trial the second time? Nobody can review, in other words, the exercise of that discretion. If the judge does discharge the jury, that very fact is incapable of review, but that very fact does put the man a second time on trial.

Mr. STEWART. That is as I understand it.

Mr. CUYLER. If the gentleman does understand it so, will he pardon a further question? Why then change the existing provision in the Bill of Rights?

Mr. STEWART. For this reason: That under the existing provision the discharge of the jury because of their failure to agree prevents a second trial of the defendant for the same offense. It is virtually an acquittal, and he can plead it in bar to another trial. It must so happen sometimes that there is nothing left for the court to do but discharge the jury, when after protracted conference and deliberation they are unable to agree, and there is no reason, I submit, why the failure of that jury to agree should work an acquittal of that defendant.

Mr. CUYLER. It is not an acquittal.

Mr. STEWART. I understand it is not an acquittal, but it works an acquittal. I beg to understand the gentleman's inquiry.

Mr. CUYLER. I will repeat the inquiry. It may be true, as the gentleman states, that the specified cases in which the judge may be justified in discharging the jury without an agreement are those which he

mentions, but the exercise of the discretion of the judge in discharging the jury never can be reviewed by any other tribunal, and the bare fact that he has discharged the jury of itself does put the man on trial the second time. In other words, in the case that the gentleman puts of the discharge of a jury from the mere circumstances of a failure to agree, the action of the court that tried the case in discharging the jury for that cause never could be reviewed. It is the law of Pennsylvania to-day, that where a man has been put on trial for his life, and the jury from any cause have been discharged without agreeing, that man is liable to be arraigned a second time under the Bill of Rights as it stands at present.

Mr. STEWART. I do not understand the gentleman as differing from me in this regard, that a discharge of the jury because of their failure to agree does inevitably work an acquittal of the defendant.

Mr. CUYLER. It never does work his acquittal. It simply leaves him in a condition to be tried again.

Mr. STEWART. If that is the law of Pennsylvania, I have never so understood it. I refer now particularly for my authority to the case of the Commonwealth *vs. Cook*, in 6th Sergeant and Rawle, the case of the Commonwealth *vs. Clue*, in 3d Rawle, and the case of the Commonwealth *vs. McFadden*, I think in 11th Harris.

Mr. CUYLER. The case in 11 Harris is a clear authority in support of the position I have stated.

Mr. STEWART. From these adjudicated cases of the Commonwealth of Pennsylvania I insist that the law is as I have stated, that where a jury has been discharged by the court under those circumstances, because of a failure to agree, the defendant cannot again be tried for that offense. He may come in upon the second indictment and plead that he has already been once in jeopardy. Now, I submit to all candid minds, as I said before, that the law of Pennsylvania is defective in this regard, because the law contemplates the holding together of a jury until they do agree without any limit as to time.

The idea of constraining a jury in this way, of compelling unanimity by a virtual imprisonment, is one of those abominations of ancient jurisprudence that should have no trace in the Constitution we propose to submit to the people of this State. It does not comport with one idea

of the office of the jury, the character of the men who compose it, nor, indeed, with common sense, that it shall be in the power of the court to hold the jury for an unlimited time. Notwithstanding you allow them food, shelter and protection, and supply all their wants while they are in conference, it is nevertheless most illogical and unreasonable to hold them together after it has been made apparent that their honest differences cannot be reconciled in an honest way. A jury go out and take the case of the defendant into consideration. They deliberate over the matter, say forty-eight hours. They come back to the court room and say they cannot agree. It is to be presumed that there are intelligent minds upon that jury, that there are twelve conscientious and intelligent men. After a deliberation and conference of forty-eight hours, if they come into court and say: "Under no circumstances can we agree," is it not apparent to anybody, if they are conscientious, candid and intelligent men, that no length of time will bring them to unanimity? I say it is a proper discretion of the court then, after the lapse of such a time as that, to discharge that jury, but to discharge it in such a manner as will not prevent the arraignment and trial of that defendant a second time.

Let me refer to the case of *The People vs. Stokes*, in New York. If Fisk, the murdered man, had met his death here in the city of Philadelphia instead of the city of New York, and his murderer had been tried here, and the jury discharged as it was in New York, there would have been no second trial here as there has been in his case since, followed by a conviction.

Of course, Mr. Chairman, my whole argument depends upon the correctness of my view of the law in the case. If I am in error, then, of course, my amendment is without any virtue whatever; but believing as I do, that the law is defective in the respect I have stated, I propose this amendment to meet that one defect.

Now, what can be said against the amendment? I prepared the amendment as carefully as I knew how. The language of it is: "In all cases where there has been a final verdict of acquittal or conviction upon an adequate indictment, the defendant shall not again be proceeded against criminally for the same offense." Now, what is a final verdict? Several gentlemen on the floor have alluded to a motion in arrest of judgment, or a motion

for a new trial. A final verdict means a verdict which cannot be touched, which cannot be reached by any action of the court. It is not a final verdict until the motion in arrest of judgment, if any has been made, shall have been disposed of. If there has been a motion for a new trial, it is not a final verdict until that motion shall have been disposed of. It is not a final verdict, I submit, until it is beyond the power of the court to interfere with it. Then it becomes a final verdict, and when it is that, the defendant ought to be allowed to avail himself of that in any future trial.

Before I take my seat let me call the attention of the committee to similar provisions in the Constitutions of other States. In the Constitutions of Arkansas and Missouri the provision is, "no person after having been once acquitted by a jury for the same offense shall be again put in jeopardy of life or liberty." In the Constitutions of Iowa, New Jersey and Rhode Island the provision is, "no person shall after acquittal be tried for the same offense." The Constitution of New Hampshire provides that "no subject shall be liable to be tried after acquittal for the same crime or offense."

Other States have modified this provision in the same way. I prefer the language of my amendment, for the reason that in my judgment it defines the right more clearly and qualifies it with greater precision.

I cite these Constitutions only to show that in these several States the people have thought it wise to depart from the language of the common law, and indeed the language of the federal Constitution upon the subject, because of the manner in which this language has been judicially construed.

I repeat, if I am in error in regard to the law, as the gentleman from Philadelphia insists, my amendment is without merit, and should of course be rejected; but, sir, upon a careful examination of the authorities upon this question I am satisfied that I have correctly stated the law, and I am persuaded that the amendment proposes the proper remedy for the defect I have briefly indicated.

Mr. H. W. PALMER. Mr. Chairman: I entirely agree with the law of the gentleman from Franklin. I think it is in accordance with the reported cases and is the law of the State. There is no power in the courts to discharge a jury sworn in a homicide case except upon the death of a juror or when one becomes so seriously

ill as to be in danger of loss of life. The judge has no discretion in the premises. The only discretion that he can exercise is the discretion governed by the rules of law, and there is no rule that enables him to discharge the jury except in case of death or dangerous illness. Therefore, when a jury is once sworn in a homicide case, they must agree. No question of time or business or convenience or conscience can have any influence; they must agree. If they stand six to six when they go out and stand six to six for six days, and the emergency contemplated by the law does not arise, they are still to be kept together. Of course we understand how, under circumstances of that kind, the judgment of juror after juror gives way; we understand how jurors allow their consciences to be violated, and how they come in with verdicts of acquittal or conviction contrary to the oaths they have taken.

This is an anomaly in the law of Pennsylvania, and one of the relics of barbarism that has been handed down to us from former ages. It is akin to the practice that once prevailed in England, of loading the jury up in a cart and traveling them around from assize to assize until they were forced to agree.

Now, whether this amendment reaches the difficulty or not I am not prepared to say, but I am prepared to vote for some amendment that will cure this manifest injustice and wrong in our system.

It is said by the learned gentleman from Philadelphia (Mr. Cuyler) that in case the judge does choose to discharge the jury, does choose to exercise his discretion, he can never be reviewed. While I always listen with great respect and deference to anything spoken by that gentleman, I am unable to agree with that view of the law. If the jury fails to agree and if the judge takes it upon himself to discharge the jury for that reason, the defendant could insist, and would have a right to insist, upon having the fact appear on the record that the jury had been discharged because they failed to agree. I inquire of the gentleman what chance a record of that kind would have in the Supreme Court; whether the case would not be reversed; whether after a man was tried again, convicted or acquitted, the case would not be reversed on sight if the record showed such a state of facts? Could the judge refuse to put the fact on record? Not if he was a just judge, not if he was an honest judge, disposed to do his duty.

If a juror dies, and the jury is therefore discharged, the fact is noted on the record of the court. If a juror becomes so ill as to be in danger of death, and a physician is called in and examines his case and so reports to the court, that fact is entered in full upon the record as a reason for discharging the jury.

Now, if they should come into court after being out for three days and report to the court that they could not agree, and thereupon the court in the exercise of their discretion discharges the jury, that fact will also appear on the record; and I put it to the gentlemen whether the Supreme Court would not reverse a case with such a record as that on sight. It is the law that in no capital case can the judge discharge the jury except on account of death or of sickness which is likely to result in death; and the barbarism of keeping juries together till they agree is well known to every lawyer who has had practice in criminal courts. I have known a case where after forty-eight hours of deliberation a juror signed a verdict that consigned one of his fellow men to an ignominious death on the scaffold because a snow storm was likely to destroy twenty-four chickens he had at home. Any law that compels such infamous conduct is wrong.

Mr. BOWMAN. Mr. Chairman: I do not know what the question of an agreement or disagreement by the jury in the trial of capital cases has to do with this amendment. This amendment presupposes an agreement; it expresses in its terms that there has been a verdict of a jury rendered and that, too, a final verdict. Hence the argument of the gentleman from Luzerne, who has just taken his seat, (Mr. H. W. Palmer,) it seems to me, has nothing to do with this question. It is proposed to strike out a salutary provision in the Bill of Rights that has been there for years to protect the citizens of the Commonwealth, and substitute in its place this provision:

"That in all cases where there has been a final verdict of acquittal, or conviction upon an adequate indictment, the defendant shall not again be proceeded against criminally for the same offense."

Now, sir, to be brief, the serious objection to this, in my judgment, consists in the fact that in case of a conviction it would preclude the defendant from being placed upon trial again. If that is so, then certainly this ought not to go into the Constitution. Is there a lawyer pres-

ent here who has not, in the course of his practice, witnessed just this state of affairs in the trial of criminal cases? The defendant is brought forward for trial; he makes application to continue his cause in consequence of the absence of witnesses, it may be; the judge presiding refuses that application; the trial proceeds; the case is submitted to the jury; they retire to their room and render a verdict of guilty in manner and form as he stands indicted. Now, is not that a verdict? But the gentleman says it shall be a final verdict. What is a final verdict? It is final so far as that case is concerned before the jury. They can never render any other verdict. So the verdict in the particular instance is a final verdict. Now, sir, suppose that the defendant then comes forward and moves the court in arrest of judgment, or asks the court to grant him a rule to show cause why a new trial in the case shall not be granted. Upon the hearing of that rule and its decision by the court, it strikes me that this would take from the court the power to interfere, and after it had granted a rule for a new trial to make that rule absurd, and say a new trial shall be had in the premises because you have got a verdict, and, as I hold, a final verdict, and one, too, that has been predicated upon an adequate indictment. I do not suppose that any gentleman here seriously proposes to incorporate into the Constitution of our State a denial of the right to a defendant of a second trial when he can show that he has been improperly convicted in the first. Let us leave the Bill of Rights as we find it in this respect. Do not let us disturb it in this particular, I beg you. It has answered its purpose well enough for years past.

Now, one word in relation to the legal position taken by the gentleman from Franklin and the gentleman from Luzerne. It is a new doctrine to me, I must confess. My practice at the bar perhaps has not been as extensive as that of many other gentlemen on this floor; but I have been in practice for over twenty years, and I never yet supposed that when the jury failed to agree in the trial of a capital or other offense with which the defendant was charged, that should work his entire acquittal and that he never could be tried again. I am aware that there are some authorities leaning to the support of the position taken by the gentlemen to whom reference has been made; but I think any man who will ex-

amine the authorities closely will find that the true doctrine is that that man has never really been placed in jeopardy, when there is no probability of getting a verdict against him, by a disagreement of the jury.

Mr. GIBSON. Will the gentleman allow himself to be interrupted?

Mr. BOWMAN. Yes, sir.

Mr. GIBSON. Some years ago there was a murder case tried in the city of Philadelphia, the name of which I forget, and after being tried some six or seven days it was discovered that the wrong person had answered to the name of the juror. It turned out that the real juror who was summoned was not the person who was in the box. The court forthwith discharged the jury.

On a second trial the plea of "twice in jeopardy" was put in, and the only ground upon which the judge refused to admit it was that there was an irregularity in the first trial, there was not the proper jury, and therefore he was not twice in jeopardy; but it was admitted as the law of the case that if there had been a proper jury and they had failed to agree, the discharge would have been an acquittal of the defendant.

Mr. BOWMAN. That was not the question before the court in that case. I recollect the case. The case turned upon this: The jury was empanelled; a certain individual's name was called, another man responded to that name and got himself into the jury box when in fact he was not summoned there as a juror at all. That is the case to which the gentleman refers.

But, sir, what has this amendment to do with the agreement or disagreement of the jury? For the life of me I cannot see. It is proposed by this amendment that wherever there has been a trial upon an adequate indictment and either a conviction or an acquittal had, the defendant shall not thereafter be subjected to a second trial. Now if he is acquitted under the law as it stands he cannot be tried again because he cannot be twice put in jeopardy; but if he is convicted and moves for a new trial, I want to have it in the power of the judge who presided over the court to grant him a new trial, that right and justice may be done.

The CHAIRMAN. The question is on the amendment of the gentleman from Franklin (Mr. Stewart.)

The amendment was rejected.

The CHAIRMAN. The question recurs on the section.



The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section eleven, as follows:

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.

Mr. MACCONNELL. That section, down to and including the word "direct," in the sixth line, is the same as the section in the old Constitution; after that all is new matter, but the subject of that new provision is amply provided for in the twenty-third section of the article on legislation which was adopted in committee of the whole. It is not necessary at all that it should be repeated here. Therefore I move to amend by striking out all after the word "direct," in the sixth line.

The CHAIRMAN. The words proposed to be stricken out will be read.

The CLERK read the words as follows:

"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."

Mr. GIBSON. I really think that that provision is much more applicable to the Bill of Rights than to the article on legislation; and if it is to be stricken out in any place, I think it should be stricken out in the other article and not in this. I think it is very pertinent to the Declaration of Rights.

Mr. MACCONNELL. The section adopted by the committee of the whole in the article on legislation is as follows:

"No act of the Legislature shall limit the amount to be recovered for injuries resulting in death or for injuries to person or property, and in case of death from such injuries the right of action shall survive, and the Legislature shall prescribe for whose benefit such actions 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."

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. MacConnell.)

The amendment was agreed to.

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

The section was agreed to.

The CHAIRMAN. The twelfth section will be read.

The CLERK read as follows:

SECTION 12. That no power of suspending laws shall be exercised unless by the Legislature or its authority.

The section was agreed to.

The CHAIRMAN. The thirteenth section will be read.

The CLERK read as follows:

SECTION 13. That excessive bail shall not be required, nor excessive fines be imposed, nor cruel punishment inflicted.

The section was agreed to.

The CHAIRMAN. The fourteenth section will be read.

The CLERK read as follows:

SECTION 14. That all prisoners shall be bailable by sufficient sureties, unless for capital offenses, 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.

Mr. MACCONNELL. The section is the same as in the present Constitution.

The section was agreed to.

The CHAIRMAN. The fifteenth section will be read.

The CLERK read as follows:

SECTION 15. That no commission of oyer and terminer, or jail delivery, shall be issued.

Mr. H. W. SMITH. Will the chairman of the Committee on the Declaration of Rights tell me why there is any necessity for the words, "or jail delivery?"

Mr. MACCONNELL. The clause is identical with the present Constitution. The Committee on the Declaration of Rights made no change in the section.

The section was agreed to.

The CHAIRMAN. The sixteenth section will be read.

The CLERK read as follows:

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.

Mr. TEMPLE. I move to amend, by striking out after the word "debtor" down to the word "shall" where it first occurs.

The CHAIRMAN. The Clerk will read the words proposed to be stricken out.

The CLERK read as follows:

"Where there is not strong presumption of fraud."

The amendment was rejected.

Mr. MITCHELL. I move to amend, by striking out the words, "strong presumption," and inserting the words, "proof of."

The amendment was rejected.

The CHAIRMAN. The question is on the section.

The section was agreed to.

The CHAIRMAN. The seventeenth section will be read.

The CLERK read as follows:

SECTION 17. That no *ex post facto*, nor any law impairing contracts or making irrevocable any grant of special privileges or immunities, shall be passed.

Mr. CUYLER. I move to amend, by adding at the end of the section the words: "Provided, That no injustice be done thereby." These are the words of the present statute of the State, and they are manifestly what is reasonable and right as it seems to me. We certainly ought not to justify and authorize the Legislature to repeal charters unjustly, and without making equitable compensation to those whose rights are impaired.

Mr. DE FRANCE. That is all right.

Mr. KATINE. Will the gentleman from Philadelphia allow me to ask him a question?

Mr. CUYLER. Certainly.

Mr. KATINE. Does he not know that it is not to be presumed that the Legislature in exercising a right of this kind would do any injustice? The Legislature represents the sovereign people of the State, and sovereignty is supposed to be incapable of doing any wrong. I think it is entirely unnecessary to add to this section the words suggested by the gentleman from Philadelphia.

Mr. CUYLER. I will answer the gentleman's question by asking him why, if he is willing to trust so much to the Legislature, he will not trust his life, liberty and everything he has in the world to the Legislature? Under his presumption that no wrong will be done, why make a Constitution at all?

Mr. KATINE. That is a very different affair. That is reserving to the Legislature a particular kind of right, and I think that we ought to trust the Legislature and the people with the largest exercise of it whenever it becomes necessary.

Mr. MACCONNELL. I cannot agree with the gentleman from Fayette, (Mr. KATINE,) that this is reserving to the Legislature any particular kind of right. It is only restricting them. Nor can I agree with the gentleman from Philadelphia (Mr. CUYLER) that it authorizes the people to repeal any law that has heretofore been passed, revoking an irrevocable charter. It simply provides that after this Constitution goes into effect there shall be no law passed conferring a charter which shall be irrevocable. That is all there is in the section. It authorizes no repeal of any act at all.

Mr. BUCKALEW. I suggest that the limitation which the gentleman from Philadelphia proposes is in another part of the Constitution, in the article on corporations, where this limitation is in its proper place. The object of this limitation in the Bill of Rights is for no other purpose than that already incorporated elsewhere, and I think the amendment ought not to be interjected here.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia (Mr. CUYLER.)

The amendment was rejected.

Mr. MANN. I move to amend by striking out all after the word "contract," down to and including the word "immunities;" so as to leave the section stand as it does now in the Bill of Rights.

The CHAIRMAN. The Clerk will read the words proposed to be stricken out.

The CLERK read as follows:

"Or making irrevocable any grant of special privileges or immunities."

Mr. CLARK. It seems to me that what it has been moved by the gentleman from Potter (Mr. Mann) to be stricken out is contained in a section of the report of the Committee on Corporations, already adopted by the committee of the whole. The latter part of that section says:

"And the grant of all such charters, powers and privileges shall be subject to the right of the Legislature to revoke, annul or change the same whenever they shall become injurious to the public, in such manner that no injustice shall be done to the corporators."

Mr. CORBETT. Does not that apply simply to corporations, and is not this sec-

tion of the article reported by the Committee on the Declaration of Rights general? In other words, this would apply to a grant to individuals.

Mr. MACCONNELL. This section applies to individuals as well as corporations.

Mr. CLARK. Section four of the report of the Committee on Private Corporations is:

"The Legislature shall pass no special laws giving corporate power, but all corporations shall be formed, their charters be changed or amended, and their powers and privileges be defined and regulated by general laws which shall be uniform as to the class to which they relate. And the grant of all such charters, powers and privileges shall be subject to the right of the Legislature to revoke, annul, or change the same, whenever they shall become injurious to the public, in such manner that no injustice shall be done to the corporators."

That section has been adopted in the committee of the whole.

Mr. M'CLEAN. Will the gentleman from Indiana allow a suggestion?

Mr. CLARK. Certainly.

Mr. M'CLEAN. Section four of the article on private corporations was rejected in committee of the whole.

Mr. CLARK. I thought it was sustained in the committee of the whole.

Mr. M'CLEAN. No, sir. It was voted down.

Mr. CLARK. If it was voted down I have nothing to say.

The CHAIRMAN. The question is on the amendment of the gentleman from Potter (Mr. Mann.)

The amendment was rejected.

The CHAIRMAN. The question is on the section.

The section was agreed to.

The CHAIRMAN. The eighteenth section will be read.

The CLERK read as follows:

SECTION 18. That no person shall be attainted of treason or felony by the Legislature.

The section was agreed to.

The CHAIRMAN. The nineteenth section will be read.

The CLERK read as follows:

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 per-

son shall be killed by casualty there shall be no forfeiture by reason thereof.

Mr. BRODHEAD. I move to amend by striking out all after the word "blood," down to and including the word "Commonwealth."

The CHAIRMAN. The Clerk will read the words which it is proposed to strike out:

The CLERK read as follows.

"Nor except during the life of the offender, forfeiture of the estate to the Commonwealth."

The amendment was rejected.

The CHAIRMAN. The question is upon the section.

The section was agreed to.

The CHAIRMAN. The twentieth section will be read.

The CLERK read as follows:

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.

The section was agreed to.

The CHAIRMAN. The twenty-first section will be read.

The CLERK read as follows:

SECTION 21. That the right of the citizens to bear arms in defence of themselves and the State shall not be questioned.

Mr. BRODHEAD. I move to amend by inserting the word "publicly" after the word "arms."

My object in this amendment is to get rid of the practice which is prevailing to a very large extent in this State, of carrying concealed weapons. If a man wants to carry arms in his own defence, let him carry them publicly so that everybody will know what he carries.

Mr. STRUTHERS. My attention was lately called to this subject by one of the most eminent judges of the State, Judge Pearson, of Dauphin county. He remarked that a great deal of difficulty arose under that very clause for the want of the word suggested by the amendment of the gentleman from Northampton. There can be no uniformity in decisions of the courts based upon the arming of citizens privately and secretly. The result of this section has been the mischief that arises out of brawls and riots. People go armed secretly because under the present Constitution they have the express constitutional right to go armed in any way they please. I second the amendment.

On the question of agreeing to the amendment a division was called for, which resulted twelve in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The CHAIRMAN. The question is on the section.

The section was agreed to.

The CLERK read the next section, as follows:

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.

The section was agreed to.

The CLERK read the next section, as follows:

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.

The section was agreed to.

The CLERK read the next section, as follows:

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.

The section was agreed to.

The CLERK read the next section, as follows:

SECTION 25. The emigration from the State shall not be prohibited.

The section was agreed to.

The CLERK read the next section, as follows:

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.

The section was agreed to.

Mr. CAMPBELL. I wish to offer a new section, to come in as section twenty-seven.

"No property or educational qualification shall ever be required for any person to become an elector or an officer in this Commonwealth."

I do not propose to debate this. I merely wish to have the vote taken. I will offer it again on second reading, and will offer, also, another new section when that is disposed of.

The amendment was rejected.

Mr. CAMPBELL. I offer this as a new section, so as to get it on the record:

"That married women shall have the same rights and power over their separate property as they would have if they were not married. No woman, merely on account of her sex, shall be ever debarred from engaging in any lawful pursuit or calling. There shall be no tenancy by the curtesy in this State."

The amendment was rejected, there being on a division less than a majority of a quorum in favor of it.

Mr. MACCONNELL. I call attention now to the introductory clause of the article.

The CHAIRMAN. It will be read.

The CLERK read as follows:

"That the great and essential principles of liberty and free government may be recognized and unalterably established, we declare that"—

Mr. MACCONNELL. That is the same as in the old Constitution.

The clause was agreed to.

The CHAIRMAN. The preamble will now be read.

The CLERK read as follows:

"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."

Mr. BROOMALL. Mr. Chairman: I rise to a question of order.

The CHAIRMAN. The gentleman will state his question of order.

Mr. BROOMALL. The point is this: That the preamble is no part of the report of the committee; it was in no way submitted to the committee, and it had nothing to do with that particular subject. It is not yet decided whether it will immediately precede this article or some other article.

Mr. MACCONNELL. I will say to the gentleman that the subject of a preamble was distinctly referred to the committee. The duty of reporting a preamble was imposed on them, and the committee acted on it and reported this as the preamble. I have no preference as to when it is taken up or when it is concluded.

The CHAIRMAN. The preamble is before the committee of the whole for adoption.

Mr. BUCKALEW. I move to amend the preamble, by striking out after the word "Pennsylvania," in the first line, the words, "recognizing the sovereignty of God and humbly invoking His guidance

in our future destiny," and inserting in lieu thereof the words, "grateful to Almighty God for the blessing of civil and religious liberty, do," so as to make the preamble read:

"We, the people of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this Constitution for its government."

Mr. LILLY. I wish to make a point of order. Is this a preamble to the report of the Bill of Rights, or is it a preamble to the Constitution?

The CHAIRMAN. That is no question of order.

Mr. BROOMALL. Mr. Chairman: I rise to a question of order, and that is, that the preamble being to the Constitution cannot be considered until after the Constitution is all adopted.

The CHAIRMAN. The point of order is not well taken.

Mr. BUCKALEW. Mr. Chairman: I understand this is a preamble to both the Declaration of Rights and the Constitution, and it must come in somewhere in some report, or we shall never reach it.

Now, sir, I do not like the language of the preamble as reported by the committee. It does not seem to me to be in very good taste. It reads very much as if we were paying a compliment to the Supreme Being by recognizing His existence. It seems to me that the form adopted by the Convention of Illinois is a very proper one except that it is too long and contains unnecessary matter. My amendment substantially follows the preamble of the Constitution of Illinois, although very much condensed. We by this simply say, and properly say, in my judgment, in commencing this work of the Constitution, "Grateful to Almighty God for the blessings of civil and religious liberty, we ordain this Constitution." We do not proceed to compliment the Great Author of all existence nor make any formal legal recognition of the fact that He does exist. Assuming all that as not a matter of controversy or a matter as to which any expression of opinion by us is required, we simply say that, grateful to him for the blessings of civil and religious liberty which, through the instrumentality of our ancestors, have been vouchsafed to us, in a spirit of gratitude and in a proper frame of mind, we proceed to establish this great permanent instrument for the government of our people and those who are to come after us.

Mr. LANDIS. I should like to ask the gentleman a question if he pleases. If you are grateful to Almighty God for blessings in the past, why are you opposed to invoking Him for the future?

Mr. BUCKALEW. I have no objection to invoking His favor for the future.

Mr. LANDIS. Then I would suggest that your amendment, along with the language of the section, be embodied in the preamble.

Mr. BUCKALEW. It is to be presumed, if our frame of mind is grateful and proper at this time, that it will continue so. At all events we can leave that to those who are to come after us.

Again, the language is not very well expressed in the concluding part: "Invoking His guidance in our future destiny." The thought is obscure and the language somewhat vague. Guidance in our future course, progress, or something of that kind, would be better. Guidance in our destiny is a mixture of thought and liable to doubt.

Mr. MACCONNELL. I merely rise to say that I prefer, personally, the amendment of the gentleman from Columbia to the language of the committee.

Mr. BROOMALL. Mr. Chairman: I did not rise to address the Chair, but if no other gentleman wishes to address the Chair at this time, I will proceed to do so.

The CHAIRMAN. The Chair will withdraw his recognition unless the gentleman desires to go on.

Mr. BROOMALL. I desire to address the Chair at some time on this question. Mr. Chairman, while I greatly prefer the amendment of the gentleman from Columbia to the original text, yet I have some opposition to that. It looks harmless, but I am not sure where it is going to lead us. The text itself is objectionable on many grounds. The amendment is open to some of those objections. My first objection to the text and the amendment is that the proposition is of no use there. It has no function.

Mr. CLARK. Will the gentleman allow me a word?

Mr. BROOMALL. Yes, sir.

Mr. CLARK. It occurs to me that perhaps it would be better to fix this in the Constitution afterwards, and that we need not now act upon this amendment.

Mr. BROOMALL. I would prefer going on at this time. I prefer speaking to the text and the amendment also, as my ob-

jections apply to both, though most to the text.

First, the words reported by the committee have no use there; no proper function. To those who believe in a Supreme Being,

I trust we all do—there may be those who do not, but I confess that I have not met them—to those who believe in a Supreme Being the phrase is useless, is unmeaning. To those who do not, (and while I doubt whether there are those who do not, I am not prepared to deny the possibility of their existence)—to those who do not, it is untrue. To all of us it is a mere mockery; it is a pretence to something that I am afraid our proceedings too often show we do not always feel.

Let us bear in mind that we are proposing not to change the Constitution ourselves, but to submit certain propositions to the people for their adoption or rejection. Are gentlemen willing to submit to a majority of ballots the question of the existence and attributes of the Deity? I am not. What a question it is! The being and attributes of the Creator; the existence of a law-giver above all legislators, of a law above all human laws, a law that sets aside all human laws when they conflict with it; a law that binds the individual not as a member of society, but as a man, and that commands him not to obey the civil law when it conflicts with this higher law. We propose to submit to a majority of ballots these great questions, whether there be a Ruler of the Universe, and whether we are responsible for our conduct to that Ruler of the Universe!

I know there was a day in the history of the world when it was supposed that councils called by men could settle the question of the being and attributes of God so as to bind the Great Ruler of the Universe; but we have long outlived that day. Now, those questions are for man, not as a citizen, but as a being responsible to his Maker—a child under the guardianship of his Father.

To what tribunal do you propose to submit these great questions? We have heard that tribunal characterized here. Gentlemen have spoken of that tribunal in a way that would make us hesitate to submit any question to it, no matter what. How has the election mob of Philadelphia been characterized? In what language has it been spoken of here? Gentlemen have risen on this floor and denounced the decision of a Philadelphia election mob in language that would

make one afraid for his country lest self-government should prove a failure; and you propose to submit these great questions to the decision of that tribunal. You propose to let a Philadelphia election mob settle for all of us the question whether there is or is not a great Judge in whose Court we are all responsible for our conduct. Just imagine such a question, submitted to such a tribunal! In all the grog-shops of the city this question is to be debated and talked about. It is to be settled there; it is to be decided there, and Christianity must submit to the decision, whatever it be!

Who asks that this question should be decided in our organic law at all? Who asks those questions to be decided here? Who submits to us the question? Who authorizes us to settle it? How can any delegate dare decide for his constituents whether there be a God and whether they owe Him responsibility for their conduct? Who asks this decision? Whom will it bind? Do gentlemen who advocate this proposition say that they have authority from the Being most interested in the question, if we are to believe their doctrine, to suffer that question to be raised here and decided by an election mob? Do they pretend to say that that great Being has authorized them to submit His powers and His existence to that kind of a tribunal?

Sir, it is quite time, at this late day, that it were understood that Christianity asks no aid from human governments; that religion can stand a great deal of crushing out without being injured, but when it is taken to the arms of the civil power, it falls degraded and dishonored. It was for this reason, and after the experience of centuries, that our forefathers divorced forever all church and State, and suffered religion to stand where it should stand, upon the consciences and the convictions of men!

Look at the history of the world and see whether we dare propose to return to the old state of things! What was the condition of Christianity before the Roman emperors allied it to the government? As pure an emanation from heaven as ever blessed the earth. What was it after? A very demon of hell! And it is so always. Wherever religion rests alone, where it was intended to rest, upon the consciences and convictions of men, there it is an angel of purity; wherever it is joined with the civil arm and rests upon

coercion, it is a curse to the country in which it is.

I could multiply examples on this point. Let us look at one closer to our own times. You know, sir, and every gentleman here knows, that in this country the denomination of Episcopalians has produced as pure christianity and as many christians in proportion to numbers as any other sect in the country, let it come from where it may. Contrast its condition here with its condition in England, where it is wedded to the civil power. There its officers are electioneered for as politicians electioneer for petty borough, town and county officers. Its benefices are sold in the market, sometimes for money, sometimes for political influence; and wherever it gets an opportunity to put its heel upon any system of christianity that is not favored by the government it does so. Ask the Catholics of Ireland; ask the Dissenters of England! Why is it that an organization so beneficent here is an engine of corruption and oppression there? It is polluted by the favor of the government.

The CHAIRMAN. The Chair is obliged to remind the gentleman that his time has expired.

Mr. H. G. SMITH. I move that the time be extended.

Objection was made.

The CHAIRMAN. The Chair hears objection. Gentlemen who object must rise and stand in their places.

Mr. Joseph Baily, Mr. Russell, Mr. Curry, Mr. Fell, Mr. Collins, Mr. Andrews and Mr. D. N. White rose.

The CHAIRMAN. Five gentlemen have risen to object.

Mr. NEWLIN. Must not the names of the five gentlemen who object to this extension of time be entered on the Journal? I should like to know who it is that objects to an extension of time in the discussion of this subject.

Mr. D. N. WHITE. You can have them taken down if you want to.

The CHAIRMAN. Five gentlemen have risen to object.

Mr. LAMBERTON. I move to amend the amendment by inserting after the word "liberty," the words, "and humbly invoking His guidance."

Mr. BROOMALL. Mr. Chairman:—

Mr. LAMBERTON. I will thank the Clerk to read the preamble as it will stand if amended, before the gentleman from Delaware proceeds.

The CLERK read as follows:

"The people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution for its government."

Mr. BROOMALL. Mr. Chairman—

Mr. T. H. B. PATTERSON. I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. T. H. B. PATTERSON. I ask if the rule of this House with regard to speaking does not refer to speaking upon the same question, and I ask whether this amendment, being germane to the preamble, changes the question on which the gentleman from Delaware has been speaking for the last ten minutes?

The CHAIRMAN. In the opinion of the Chair they are two separate propositions.

Mr. T. H. B. PATTERSON. It is the same question, however. He has been speaking generally on the subject, not on the language of the particular amendment.

The CHAIRMAN. That is very true, so far as the gentleman's remarks have gone; but the Chair does not see any power in the rule to deny him the right to speak on two propositions.

Mr. BROOMALL. Does the Chair rule that the whole question is open under this amendment?

The CHAIRMAN. The merits of the text as well as of the amendment.

Mr. BROOMALL. Mr. Chairman: I have alluded to one instance in which the civil power has spoiled a most excellent system of religion. Let any one read the history of the Reformation, and he will find that it was beneficent, like the rain from heaven upon the dry earth; that it spread glad tidings everywhere, except where it was taken hold of by some government, and there, even though the influence was only by a smile of court influence, its effect was totally spoiled, and it became a curse to the country in which it was. There have been driven from countries, where the State has extended a helping hand to religion, hundreds and thousands of their best citizens. They have been driven from their homes, too often to starve. That peopled America. This was the case in Spain in the instance of the banishment of the Moriscoes, who were better christians than the christians who had the support of the government in expelling them.

What was Puritanism in England before it came over to Boston? You could not imagine a better and brighter sample of the christianity of the Sermon on the Mount than that. But when it came to Boston and allied itself to the civil power of the State, what did it become? It turned itself to murdering Indians, hanging Quakers and banishing Baptists to starve in the wilderness.

It is not the fault of religion that this occurs. It is the fault of the government in undertaking to support religion. It is the unholy alliance. I say again, Christianity asks nothing from the government but to be let alone. It has shown in the history of the civilized world that it can bear the iron heel of oppression and survive it, that it can bear any amount of persecution and opposition, but that the smile of power pollutes it, changes it from an angel of light to an embodiment of hell.

It was well that our ancestors had some schooling, some experience in this business. They came away from a government that fostered religion with the civil arm, and they were very careful to put such provisions in their Bill of Rights and in their Constitution as would forever prevent any such foul combination, any such assistance as that; and the fact that they did not put the provision now proposed in the Constitution argues greatly in favor of leaving it out with me, because they were not only purer patriots than we ought to claim to be, but they were probably better christians, and they certainly did know what to put in the Constitution of the State and what to leave out, being fresh from the terrible ordeal of experience.

Now, I do not intend to occupy the time of the Convention, for I am not at all well, but I desire to say only that the law of christianity, the law of religion, depends in no way upon the same foundation with the laws of the State. The laws of the State, the laws of human government, depend, as a last resort, always upon coercion, and the moment you aid or pretend to aid the cause of religion by coercion, let it be with even the weight on the one side of a smile or the weight of a frown on the other, you destroy its beneficence; you render it, instead of what it is, something that is a curse to the country in which it is. Religion depends upon the consciences and the convictions of men, of each individual man; every man must judge it for himself; he is responsible alone, not for anybody else, but for him-

self. "Let every man be fully persuaded in his own mind" is the command; not be persuaded in the mind of a State Convention; not be persuaded in the mind of the State or of the government, but in his own. Hence I say that all favor shown to the cause of religion by the State is a disadvantage to it. Never yet did the civil arm extend itself to aid the cause of religion without polluting it, without destroying its usefulness, and therefore I will vote to keep out everything of the sort here lest we degrade a holy cause, lest we drag it down from its high position of resting upon the consciences and convictions of men and make it rest upon the mere arm of power. Sir, would you enforce with the sword a proposition of the kind you put here? I imagine not. Yet the sword is the ultimate resort of all civil government.

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

Mr. BROOMALL. Certainly.

Mr. HORTON. The question I wish to ask is whether the Decalogue has anything to do with civil government?

Mr. BROOMALL. The gentleman must settle that question for himself. Religious questions are questions for the consciences of each of us individually. I dare not ask him how he settles it for fear he should not settle it my way, whereby I might frown upon him. I am bound to consider that he settles it according to his own conscience. These questions are questions of sincerity. The whole thing is there; and if the gentleman settles his position sincerely for himself he does it right for him, and neither I nor all the men in the State have any right to complain.

Mr. HORTON. I ask whether the Decalogue has anything to do with Christianity?

Mr. BROOMALL. The gentleman has no more right to ask me that question than I have him. I have no right to ask nor to answer it.

The CHAIRMAN. The Chair has been inclined to suggest ever since he has presided here that interruptions for the purpose of leading an argument or suggesting something not under consideration, are hardly permissible within the rule. Where a member is misrepresented by a speaker or where he discovers that a speaker is laboring under a manifest mistake as to a matter of fact, it is proper to interrupt him to correct that; but not to put arguments in his mouth. It is for



him to state his case, and for others to answer it when they get the floor.

Mr. LILLY. We should have saved hours of time if that rule had been applied before.

Mr. CURRY. I desire to ask a question for information. The gentleman has dwelt upon the subject of religion. I simply desire that the gentleman should explain what I am to understand by the term.

The CHAIRMAN. The Chair does not think the gentleman on the floor is required to answer that question.

Mr. BROOMALL. I have no objection to referring the gentleman to the book which he ought to have read, but which I am afraid he has not read in the parts that would most instruct him, or he would not need to ask me. It is "to do justly, to love mercy and to walk humbly before God. It is to visit the widows and the fatherless, and keep ourselves unspotted from the world."

Now I have only one other sentence to utter, and it is this: In the name of the religion that I revere, in which I was educated, and for which I have supreme honor and supreme regard, I ask that this Convention will withhold its hand. All it asks is to be let alone; but if you will touch it, better touch it to punish, better touch it to crush than to aid, because you can do it less damage by putting upon it the iron heel of oppression than you will by clasp- ing it in the unholy grasp of the civil power.

Mr. CAMPBELL. Mr. Chairman, I shall vote against the amendment to the amend- ment and against the amendment, and I shall then vote for striking out all that is in the new preamble that is not in the old preamble, because I think there is no ne- cessity whatever for putting into our Con- stitution a recognition of the Almighty. We all either believe in God, or should do so, in my opinion; and if we believe in God and in the religion He has revealed to us, there is no necessity whatever of declaring that belief in a State Constitu- tion. Seeing no necessity, therefore, I shall vote against inserting anything in the Con- stitution that looks to an express recogni- tion in words of the Almighty or of the christian religion, because I think it would be a mere empty declaration. It is the first step, in my judgment, toward an attempt to insert in the Constitution of the State of Pennsylvania something like sectarianism or a State religion. If we insert now this proposed recognition of

the Almighty, before a few years are over there will be an effort on the part of some people to insert the recognition of a par- ticular church in the Constitution, the re- cognition of some form of religion that shall be the State form of religion, and to which men must bow. Deprecating, as I do, any attempt of that kind, I should be sorry to see this preamble adopted, be- cause it points toward such an attempt being made.

I want the preamble left exactly as it was under the old Constitution. We have lived under that preamble; we have prospered under it; under that Constitution christianity has been declared a part of the common law of the State. No Christian doubted the existence of a God or the di- vinity of Christ, notwithstanding the fact that the Constitution said nothing upon the subject. Believing, therefore, that we would get along as well under the new Constitution, without the insertion of the proposed clause in the preamble, I hope the amendments will be voted down, and that we shall vote in the old preamble.

Mr. WOODWARD. Mr. Chairman: I do not rise to enter into this discussion at all, but simply to refer to one point in the re- marks of the gentleman from Delaware (Mr. Broomall.) In all that that gentle- man said by way of deprecating a union of church and State, I do most heartily concur, but not exactly for the reasons that the gentleman has stated. I think all such unions of church and State are more injurious to the church than the State; but whether to the one party or to the other, I always applauded the sentiments of our forefathers which separated them, and I trust we shall always keep them separate in this country of ours. But, sir, when I hear from a distinguished gentle- man like the gentleman from Delaware county that in our mother country, where a different policy has prevailed, where church and State have had some sort of union, the christian religion has become a demon of hell and that it is a false and hypocritical pretence, then I rise just to enter my most solemn protest against that gross mis-statement.

Mr. BROOMALL. Mr. Chairman: I must ask the gentleman to allow me to correct him. I certainly did not say that the christian religion in England had be- come a demon of hell there. I admit that there is an immense amount of christian- ity there, but that it is not drawn within the arm of the civil power.

Mr. WOODWARD. The gentleman spoke of the Episcopal church in this country as having some religion in it.

Mr. BROOMALL. Being better than in England.

Mr. WOODWARD. And then he contrasted the Episcopal church in England as having no religion because of its union with the State. That I understood to be the argument. I will accept whatever modification the gentleman makes, but I think everybody here understood from the argument that the gentleman meant to say that the christianity of the Church of England had been killed out by the embrace of the State. If that was not the argument I am at a loss to know what he was talking about.

Now, Mr. Chairman, I say for the benefit of the gentleman from Delaware who has spoken of the Bible, which he commends to the study of the gentleman from Blair, (Mr. Curry,) that if he does indeed value that book, he ought to know that it has been furnished to him by the Church of England; that it was translated out of the original tongues by that church and by nobody else; and the gentleman's piety, which has been nourished upon the text of that book, is indebted to the Church of England for its growth. Moreover, sir, that Church of England, suffering, I agree, from the embrace of the State, has translated that bible into all the languages of the earth. You cannot name a language on the face of the earth into which that church has not translated these Scriptures; and, sir, it has not only translated them, but it has sent them on the wings of the winds of heaven to every quarter of the globe. Why, sir, six years ago I crossed the water, and a gentleman of great respectability, a friend of mine, told me before I left this city that I would find upon the continent of Europe no trace of christianity except in the Church of Rome; that Protestantism had died out in its very cradle. I was gone from home seventeen Sundays; two of them were spent on shipboard, the others on land. And I tell you, Mr. Chairman, that on shipboard, the Church of England furnished me with a Protestant service going and coming, and there was not a Sunday that I happened to be on the continent in which I did not find the Church of England there by her chapel service and her missionaries, even in the most obscure towns which I visited. When I went to hear those missionaries, whom the Church of England had sent to the continent of

Europe, I never heard the gospel presented in more simplicity and purity than it was presented by those gentlemen; and I said to myself, "This is queer; I came here with the distinct information that I was to find no Protestant religion on the continent of Europe, and yet that religion is nowhere absent." In Geneva, where John Calvin lived, the Roman Catholic church has possession of the ground; but there was an elegant English chapel and a gospel English preacher in it. I went to hear him in the city of Geneva; and so in every town. Even in the little town of Martigny, at the foot of the Alps, I saw a card that there would be preaching by the Rev. So-and-so on the next Sunday. And in towns where there were no churches or chapels, services were held in hotels and car depots and in public halls. Everywhere I found the Church of England preaching the gospel on the continent of Europe, and my friend who told me that I would not find it there was utterly mistaken. What he meant, because he was a Presbyterian, was that there was no Presbyterianism there. He did not look through the right spectacles, and my friend from Delaware has failed to look through the right spectacles.

I agree with the gentleman from Delaware that the union of Church and State is a great evil, and if that were the question before us, I should vote with him with great pleasure. But when the gentleman takes advantage of the question before us, to mis-state the case so grossly as he has done in his reference to the Church of England, I cannot allow his remarks to pass without reply. I am no defender of the Church of England; but I do love the truth. I have great respect for that church; I was brought up in that faith; and the gentleman must excuse me for attachment to it, for it has grown with my growth, and I will not hear the truth mis-stated so grossly as we have heard it here to-day without raising my voice to contradict it.

Now sir, I say, and the history of the world will prove what I say to be true, that the Church of England, suffering under all the disadvantages that may result from a union with the State, has done for the interest of christianity in this world what no other church on earth has ever done. She has sent the gospel all over the world. She has sent it to us. We have the Bible of King James in our houses and our hands, and I wish I could add in our hearts too. I do

not say that, in God's providence, it would not have been given to us through some other instrumentality if He had not chosen that instrumentality; but I do say that this is the instrumentality He has chosen, and we are indebted to this church for the Bible.

Again, the gentleman's conceptions of the reformation are as erroneous as his statements in regard to the religion of the English church. The reformation commenced, as we all know, upon the continent of Europe. The great leaders were Calvin, Luther and Knox; when that reformation came to England, Ridley, Cranmer and Latimer, and such men. And I trust the gentleman from Delaware will believe those men were sincere, because I saw in the streets of Oxford a monument that was built—not exactly on the place where they were burned, because the street in which they were burned is too narrow, but it was very near there—to these three men who had laid down their lives for the religion of the Church of England. The reformation, coming to England under the patronage of such men, was not carried to the excesses to which it was carried on the continent of Europe. Every abuse of the church of Rome that needed to be reformed was reformed, but the apostolic usages of the church of Rome were not rejected because they were of the church of Rome. They retained those that were really apostolic and pure, and the English reformers reformed the church after that fashion.

Now, sir, what do you find? You find the government of Great Britain one of the greenest and youngest powers of the earth to-day. There perhaps is not a nation on the face of this globe whose influence is felt so far and whose power is so great as that of Great Britain. You find on the continent what my Presbyterian friend told me I would find, that Protestantism had died out. Why? Because it lacked the conservative elements that the English reformers carried into it. Lacking these conservative elements, the church of Rome has over-run the Protestantism of the Continent. But it has not over-run the Protestantism of England, and it never will.

England is not only a christian State that is sending the Bible all over the world and has given us the Scriptures which we boast of, but the martyrs to whom I alluded have ripened that church with their blood.

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I am not responsible for these allusions. I make them only because of the erroneous statements of the gentleman from Delaware. I do not think they had any relation to the subject under consideration; nor do I think that they are of very much consequence. I do not think it is of any great consequence whether we recognize the existence of a Supreme Being in our fundamental law or not. I would much rather we would recognize Him in our individual lives. But following the examples of Mr. Jefferson, who drew the Declaration of Independence, and who made an express appeal to the Supreme Ruler of the Universe, I think we do very well in this fundamental law to make a reverential and respectful allusion to His being. Therefore I am in favor of the amendment, but whether it be adopted or not, I do not think we are going to commit to what the gentleman is pleased to call an election mob in the city of Philadelphia the question whether there is a Supreme Being or not. No such question is to be submitted to anybody. We, the representatives of the people of Pennsylvania, in giving back to the people a Constitution, propose respectfully to recognize the supremacy of a Supreme Being. That is done in other American documents, in almost all American documents, and that is the whole of this proposition.

I only arose to correct the erroneous allusions and mistakes which the gentleman has fallen into in regard to the Church of England.

One single observation more and I am done. If the gentleman will go to England, he will find that the evils of the union of church and State are not so great as he assumes them to be. He would not find the livings of the church sought for by politicians and benefices sold for money, but he would find in almost all the parishes of that country as beautiful specimens of christianity as are to be found anywhere in the world.

And now, sir, this is my last observation: Those things which are true of the Church of England, at home and abroad, are all true in despite of the ill-advised connection of the church and State.

Mr. CURRY. Mr. Chairman: I shall occupy but a very few moments in considering this question. I am very sorry that it becomes necessary for me to say anything upon the subject. The gentleman sitting in front of me (Mr. Broomall) took rather a wide range upon the ques-

tion before the Convention, and in order that I might not misunderstand him, I asked him a question for information, as he was discussing the subject of religion. I knew full well what his answer would be before I asked the question; but it was necessary that I should have from his own lips the answer which he gave me. He said "pure and undefiled religion before God and the Father is this: To visit the fatherless and the widows in their affliction and to keep himself unspotted from the world." I knew that would be his answer; and I appeal to the conscience and the judgment of every member of this Convention if he will not decide that it has no reference to the question before the Convention, which is simply the recognition of God.

Another reason I had in view in asking the question was because my mind was not clear in relation even to the kind of religion of which the gentleman is an advocate. Therefore the text preceding the one which he read is appropriate. It is "if any man among you," as a member of this Convention, "seems to be religious," as some of us do, "and bridleth not his tongue," which some of us do not, "but deceiveth his own heart," as some of us are apt to do, "that man's religion is vain," as I am afraid some of ours is. [Laughter.]

Now, Mr. Chairman, I simply quote God's own truth touching that as an answer to the gentleman's whole argument in relation to the preamble. It is a recognition of Almighty God. It is not a question as to whether I shall be a Methodist, or you a Presbyterian, or you a Catholic, or you a Lutheran or an adherent of any other denomination on God's footstool. That is not the question before this Convention. I understand the question to be purely and solely a recognition in the Constitution of that God who made you and who made me, the Father of us all and the judge of the quick and dead. If we are to stand here and discuss the question of religion, I am frank to say that you have as good a right to your opinion as I have to mine, and upon the other hand I will agree with the gentleman who said I have no more right to interfere with his religious liberties than I have to take his life; neither has he a right to interfere with mine.

But that, as I remarked, is not the question. The question before us is not what church was the first, or what church will be the last, or what church is doing to-day

the most good in the world, or what church is to spring up after we are dead and gone that will do good. The question is to-day, shall we adopt this principle and thereby answer the prayers of tens of thousands of our constituents who through the churches have asked us time and again, by their petitions, to recognize God in this preamble. As a member of this Convention, as a representative of free people, free to worship God according to the dictates of their own consciences, I will stand here to-day and will vote for the preamble recognizing your God and my God in the Constitution of the Commonwealth of Pennsylvania.

Upon the other hand, if we fail to do this, we by our own vote will say indirectly, "I own God as a maker: I own God as the foundation of all the churches, although we do not recognize Him." The God here we desire to recognize does not belong to any separate or distinct denomination. He does not merely recognize you because you may be a Catholic, an Episcopalian, a Presbyterian or a Lutheran. This is not the kind of a God we desire to honor, but that God who is no respecter of persons, but in every nation he that feareth Him and worketh righteousness shall be accepted of Him.

Mr. Chairman, let us not fail to see this question in its true light, and thereby, throwing off everything like sectarianism, throwing aside everything like prejudice, stand out in bold relief before God, Who sees us, and before our constituents, and recognize that God to whom we shall give an account for the deeds done in the body.

MR. T. H. B. PATTERSON. Mr. Chairman: I merely want to set the question right from the misrepresentations which have been made by the arguments that have been used. As one of the original movers of the insertion of the acknowledgment of Almighty God in the preamble of our Constitution, I wish merely to state the reason why the people of Pennsylvania ask this at the hands of this Convention as they have done by their petitions.

Every State Constitution, with the exception of four or five, or at least thirty of the State Constitutions, contain this recognition. Every Constitutional Convention that has met to reorganize and revise a State Constitution in this broad land has made this recognition if it was not already contained in the Constitution of the State.

MR. NEWLIN. I ask the gentleman if it is done in the case of West Virginia,

which, I believe, is the latest Constitutional Convention which has sat.

Mr. T. H. B. PATTERSON. I believe it has been done, although that Constitution, having been recently published, is not in our edition of Constitutions, and therefore I cannot state positively. If that is not the case there, it is the only exception.

Further than this, the recognition of God as contained in any of the amendments or the preamble as reported by the committee, is not a recognition of any religion under heaven specifically. It is simply an acknowledgment on the part of the people of Pennsylvania of the existence of God Almighty. It is not a question as to whether God shall be voted up or voted down by the people of Pennsylvania. It is simply a question of the welfare of our State, as to whether, as a conservative measure, in order to check, in some degree, the tendency to corruption and the prevalent irreligion of the day, the substantial portion of the people of Pennsylvania shall acknowledge this as a bulwark to which they shall cling, whether they shall put into their Constitution this tribute to the power which is behind the State and above the State and in which all the States in this country, so far, have recognized their faith.

That is the only question before this Convention, and I take it that this question ought to have but one verdict at our hands; and if any gentleman on the floor of this House thinks otherwise, then I hope he will vote as his conscience dictates, but not make a straggling host of the pretext that this is a question of wedding religion to the State, which it is not; and gentlemen who make that statement on the floor of this House very well know that it is a false specimen of special pleading, that it is a specimen of dragging in outside matter as a subterfuge behind which to hide and on which to base their opposition in this respect.

I ask delegates sincerely and honestly to look at this question and vote conscientiously, as they ought, on the question of the recognition of God without regard to any particular religion, and remembering that such a recognition is not a step towards the recognition of any State religion, but rather a conservative advance, because any advance that is reasonable always tends to prevent those upheavals which unreasonable restraints sometimes reduce.

Mr. CRAIG. Mr. Chairman: If the committee can have patience I should like to say a few words on this subject. I am the more especially disposed to do so because the first conventions which were held in this country for the purpose of suggesting an amendment to the Constitution of the United States of the character indicated in this preamble, were held in the county in which I reside. The question in all its bearings has been fully discussed there, and I undertake to say that with the plausible theories which were presented in favor of such amendments that community stood five out of six in favor of the amendments at the beginning of the discussion and at the close of it stood five out of six the other way. I have seen a letter addressed to a gentleman in this city from a reversed gentleman in my county, who participated in one of those discussions, in which he furnishes sixty names, and I presented the petition to this Convention. In the letter he remarks that nine-tenths of that community are in favor of this amendment. I have in my possession a newspaper report, never contradicted, of the discussion in which the gentleman participated in his own neighborhood and in an adjoining church in which at the conclusion of it, after two days discussion, the proposition was voted down three to one.

Mr. D. N. WHITE. I should like to ask the gentleman a question?

Mr. CRAIG. If it will be taken out of the gentleman's own time, I shall yield.

Mr. D. N. WHITE. I ask whether there is any parallel at all between the question about amending the Constitution of the United States and the question before us to-day?

Mr. CRAIG. It does not make any difference *what* Constitution is attempted to be amended in this way, the *principle* is the same. I was about to come to that. We had a meeting in this hall of the gentlemen who were in favor of this kind of amendment; and if you look at the speeches made as printed in the pamphlet published by them, you will ascertain that they put this thing upon the ground, that a majority believing these doctrines have the right to adopt them into their Constitution. It is so advocated in the newspaper called the *The Christian Statesman* in this city, established for the purpose of securing this amendment to be made not only to the Constitution of the United States, but of this State. They ask in the petitions sent us on this subject

that we shall make an acknowledgment of Almighty God and that we shall also make an acknowledgment of Jesus Christ and of the Scriptures as the supreme law of the land, to which all other laws must conform.

Now, sir, there is a difficulty in their minds, and that difficulty is the action in the French Assembly which declared that there was no God. It troubles the minds of all those who ask for this legislation. The difficulty is just this, that whenever you come to legislate and to vote upon such a question as this, you may just as readily vote it one way as the other; it can make no difference on the fact; and whenever you open the door to vote upon it one way you must admit that the question may be decided the other way, that the vote may as readily be that there is no God, as that there is. Well, sir, put it upon the ground of majority, and let there be one man to-day in the State of Pennsylvania who does not believe in the sovereignty of God, and by what right do you undertake to disfranchise that man any more than he can disfranchise you. Oh! they say, it is a question of majorities; but the question of majorities is only a question of force, and not a question of right.

If you may to-day disfranchise any man because he does not believe in the existence of a God, to-morrow you may disfranchise a man because he does not believe in the plenary inspiration of the Scriptures, and the next day because he does not believe in the deity of Jesus Christ. This is the logical conclusion to which this kind of legislation brings us. It is a question of the strongest denomination, if you make it a question of majority; and how else are you to determine it than by a vote of the majority?

And then, again, we submit this Constitution to the people and they vote it down, and they vote it like the French Assembly voted it down. We stand in history precisely upon the same platform of wickedness upon which they stood.

This is a question for every man's judgment and conscience. It is not to be determined by Mr. A for me, nor is it to be determined by a majority for me. It is a question which I am to settle for myself, and if I govern my conduct by the laws and rules of society that is all that society can ask of me. The Constitution is a matter for all the people; and when I say "all," I do not except any. A man who does not believe in the existence of God

has as much right to participate in the government of the country as the man who does believe in it. No man has a right to call another in question about it. It is simply not the subject of legislation, and whenever we make it the subject of legislation, we make a mistake.

There are a great many ideas about God in the world, principally four. First, we have the anthropomorphic idea, that God is but a big man with bodily parts and passions like we have. That was the Hebrew idea. Then we have the scientific idea, which regards God but as a great force in nature. Then we have the idea which Jesus gives us, that He is the Father of all mankind. That was believed by the Athenians and Greeks before his day, and was referred to by Paul on Mars Hill. Then we have the Westminster definition of God, which, if any gentleman will take the trouble to study and investigate, he will find conveys no idea whatever to the mind. It is simply a blank atheistic definition of God. But which of all these is the idea now to be inserted in this Constitution? Who shall tell or determine? Gentlemen say, "nobody need determine, that each may determine for himself." But a majority may as well determine which idea of God is meant. Then is it not a vain thing to insert it here? It determines nothing; it settles nothing, and is more likely than anything else to be voted down. It is not the subject of legislation.

There are many things that I should like to say on this subject, but I will not detain the committee further.

Mr. LAWRENCE. I should like to ask my friend a question if he will permit me. I know something of the people he represents, though I may not know as many in that county as he does; but I want to know if the gentleman believes he is representing the people of that county on this question?

Mr. CRAIG. Yes, sir.

Mr. LAWRENCE. Does he believe there are men in Lawrence county to-day who do not believe in the existence of God?

Mr. CRAIG. Yes, sir, I know there are men there who say they do not. I desire to say further to the gentleman that one of the reasons why I was desired to come into this Convention was that it was known I would vote against any amendment of this kind; and I will say further that I received all but two hundred of the votes that were polled in my county.

Mr. D. N. WHITE. I merely wish to call the attention of the committee to the fact that the discussions which took place in Lawrence county were with regard to an amendment proposed to the Constitution of the United States recognizing Christ as the head of the nation and the Christian Scriptures as the law of the land. There is no doubt that the people of Lawrence county—I know them well—would vote almost unanimously in favor of the proposition now before this Convention. We merely recognize in this whatever Jew, every Mahometan, every christian, in fact nearly the whole world recognizes—our grateful acknowledgments to the great Supreme Being who has preserved us as a nation to this time.

But, sir, I merely rose to make the remark I have, to show the Convention that the discussion referred to by the gentleman from Lawrence did not relate to this proposition at all. I hope we shall now have the question and dispose of this matter.

Mr. DUNNING. Mr. Chairman: I have been very much interested and instructed in listening to the arguments of gentlemen on this question. If it be a fact, as stated by the gentleman from Lawrence, (Mr. Craig,) that there are some individuals in his district who do not believe in the existence of a God, I trust there is no gentleman on this floor who stands here as the distinctive representative of any such class of individuals. I feel confident that there are none such here. I feel confident that there is no one here who does not recognize that all-prevailing Power, and recognizing it, we feel that we owe an allegiance to that Power which we owe to no other source or direction.

I do not believe that it can be very truthfully said that we have been here for the last few months in the capacity of a Constitutional Convention especially directed by the governing influences of that Power. While I do not believe in placing in the fundamental law the words that are set forth in the proposition of the committee, I would willingly agree to the modified form in which it is now presented that acknowledges the existence and power of Almighty God. We are not to make a document to be submitted to Him for his approval, but as humble creatures and instruments, in the discharge of duties far down below that Power, we are framing an instrument to be submitted to our fellows for their judgment and

action—not that we would by this proposition, as has been suggested by the gentleman from Columbia, (Mr. Buckalew,) be paying a sort of ovation or something of that character to that Power, but we humbly admit the existence of such a Power and that our acknowledgments are due in that direction.

But, sir, in the range that this discussion has taken, there have been a great many very instructive arguments. I was very much interested in the argument of the gentleman from Delaware, (Mr. Broomall,) in the course of which he said many very truthful things, many things that it would be well for the members of this Convention to ponder over. It is evident that the gentleman from Delaware, from the position he took and the drift of his argument, has deeply studied this entire question, its history and development as coming down from past ages to the present time. He has shown you that when the religious sentiment is not governed by the principles that were laid down by the author of Christianity; he has shown you in the same chapter referred to by the gentleman from Blair (Mr. Curry) that when the tongue is the instrument that reflects the sentiment of the parties who are not governed by the principles laid down by the Author of the christian religion, it is a power that is like the power of hell.

Sir, this proscriptive principle that has crept into the religious world, of the right of human governments to force a religion upon the people, is very much like that sort of religion spoken of by Paul, the great apostle of the Gentiles, when he said, that he in all good conscience persecuted the Church of Christ, and he did it, because he was brought up in the straightest sect of Pharisees, and he verily believed, he was doing God service when he was on his way to Damascus with his pockets filled with letters from the authorities to take and capture every man who acknowledged the christian religion. Sir, there have been thousands of men from the days of Paul down to the present time, who believed they were doing God service when they persecuted the man or the church or the community that did not subscribe to their ideas of faith. That has been true from the time the first creed was ever introduced into the world, and it is true to some extent to-day.

Therefore I oppose the introduction of anything into this Constitution that shall bind the conscience of any man. Let

every man stand free to act upon the principles that animate his heart, with a clear judgment and a just conscience before God.

Mr. Chairman, I have read of a certain individual who had arrived at the age of twelve years and who, while his friends were on their way down to Jerusalem, became lost, and was hunted for, and was finally discovered in the midst of the authorities of the land at that day, and although but twelve years of age he was asking and answering questions in a way that astounded the people. Sir, if a boy twelve years of age had come in here with the simple principles of christianity taught him at his mother's knee and had listened to the arguments that have been made here on this question, he would have been as much surprised as the people of Jerusalem were when the child was found in the temple talking to the doctors and lawyers, and confounding them all.

The CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Dauphin, (Mr. Lamberton,) to insert after the word "liberty" the words, "and humbly invoking His guidance."

The amendment to the amendment was agreed to, there being on a division: Ayes, fifty-one; noes twenty-two.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Columbia, (Mr. Buckalew,) as amended.

Mr. JOSEPH BAILEY. Let us have it read.

The CLERK. The amendment as amended is to strike out the words, "recognizing the sovereignty of God and humbly invoking His guidance in our future destiny," and to insert, "grateful to Almighty God for the blessing of civil and religious liberty, and humbly invoking His Guidance, do," so that the preamble will read:

"We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution for its government."

The amendment as amended was agreed to: Ayes, sixty-two; noes, not counted.

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

Mr. HANNA. I move to amend by striking out all between the word "Pennsylvania" and the word "ordain," so as

to leave the preamble as it stands in the present Constitution.

The CHAIRMAN. The amendment is not in order.

Mr. HANNA. Then I move to strike out this preamble and insert the preamble in the present Constitution.

Mr. MACCONNELL. That is just what has been put in

Mr. CAMPBELL. Is it in order to move as a substitute the preamble of the present Constitution?

Mr. HANNA. That is my motion.

The CHAIRMAN. It is in order to move to strike out the entire preamble.

Mr. CAMPBELL. Then I move to strike out the entire preamble as it stands here and insert the preamble of the present Constitution.

Mr. HANNA. That is my motion.

Mr. BROOMALL. I only desire to interrupt the proceedings of the Convention for one moment.

I was very much astonished at the course taken by the gentleman from Philadelphia (Mr. Woodward) in advocating his peculiar church, by way of holding out the idea to the Convention and probably to as much of the world as cares anything about our proceedings that I had denounced it. I had done no such thing. I had paid it the highest tribute that any man can pay to any organization. I understand the gentleman's church to be the Episcopal church of the United States, for which I have the highest regard, to which many members of my family belong, where I frequently go myself, with whose ministers I associate probably more than with the ministers of any other church. What I did say was that when you take that organization to a country where it has the civil arm to lean upon, it becomes a very different thing. If the gentleman intends to advocate the State Church of England and its connections with the crown, its leaning upon the civil arm, its sale of offices, its trafficking in power as much as any Philadelphia politicians traffic in power, it is well for us to understand it. I separate his church from the State Church of England, just as I separate all organizations in the United States from similar organizations that may have State aid elsewhere. The rule is the same with all churches. The State can corrupt them by favor and support, but it can only aid them by oppression.

This is all that I desire to say, except that the amendment, in the shape in which it now is, is only useless. It can



only be hurtful by being the entering wedge to what may be worse. That is why I prefer the preamble in the Constitution as it is, and will vote for the amendment of the gentleman from Philadelphia.

Mr. BUCKALEW. Mr. Chairman: I object on a clear ground of order to the present amendment, which is to strike out the whole section, and then restore identically the very language of the section without the amendment. I object because you cannot do indirectly what you cannot do directly. You cannot, by a direct motion, strike out the words which have been voted in; and of course, as you cannot do indirectly that which is prohibited directly; you cannot strike out the whole section and then restore it to exactly the same words without the amendment which has been voted in.

The CHAIRMAN. The Chair will say that in one sense the point taken is correctly taken; and inasmuch as the only words that could be properly stricken out are not very essential words, and those preceding them could not stand independently, nor could the others stand independently, the Chair will rule the amendment out. It is not in order. The question is on the preamble as amended.

The preamble as amended was agreed to; there being on a division, ayes fifty-six; noes thirty.

The article and preamble having been gone through with, the committee of the whole rose.

The PRESIDENT *pro tem.* having resumed the chair, the Chairman (Mr. Bigler) reported that the committee of the whole had had under consideration the report (No. 18) of the Committee on the Declaration of Rights, and had instructed him to report the same with sundry amendments.

The article as reported amended by the committee of the whole is as follows:

#### PREAMBLE.

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do 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 recognized 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 indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent. 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 a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of profit or trust under this Commonwealth.

SECTION 5. That the elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent 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 men; 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 libel, 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 possessions 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 witness 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 just compensation being first made or secured.

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.

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 rebel-

lion or invasion, the public safety may require it.

SECTION 15. That no commission 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."

The amendments were ordered to be printed.

ELECTION BOARDS.

Mr. BUCKALEW submitted the following report, which was ordered to lie on the table and be printed :

*The Committee on Suffrage, Election and Representation report the following article :*

ARTICLE —.

OF ELECTION BOARDS AND CONTESTED ELECTIONS.

SECTION 1. District election boards shall consist of a judge and two inspectors to be chosen annually by the citizens, each elector having the right to vote for the judge and one inspector; and each inspector shall appoint one clerk to assist the board in the performance of its duties; but the selection of the first election board in any new district and the filling of vacancies in election boards shall be by judicial appointment, or otherwise, as shall be provided by law. Members of election boards shall be privileged from arrest upon any day of election, and while engaged in making up and transmitting returns, except arrest upon warrant of a court of record or judge thereof for an election fraud or for wanton breach of the peace; and in cities they may claim exemption from jury service or from selection upon jury lists during their terms of service.

SECTION 2. No person shall be qualified to serve upon an election board who shall hold or shall within two months have held any office, appointment or employment in or under the government of the the United States, or of this State, of any city or county, or of any municipal board, commission or trust in any city, save only justices of the peace and aldermen, and persons in the military service of the State; nor shall any election officer be eligible to an election to any civil office to be filled at an election at which he shall serve, save only such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general laws.

SECTION 3. The courts of common pleas of the several counties of the Commonwealth shall have power, within their respective jurisdictions, to appoint overseers of election, to supervise the proceedings of election officers and general management of elections, to maintain the integrity of returns and of the ballots received and counted, and to make report to the court as may be required. Such appoint-

ments to be made for a part or for all the districts in a city of county, or in a ward or other division thereof, whenever the same shall appear to the court to be a reasonable precaution to secure the purity and fairness of elections. Overseers shall be two in number for an election district, and shall be persons qualified to serve upon election boards, and in each case members of different political parties. Whenever the members of an election board shall differ in opinion, the overseers present, if they shall be agreed, shall decide the question of difference. In appointing overseers of election, all the judges of the proper court (able to act at the time) shall concur in the appointments made.

SECTION 4. The trial and determination of contested elections of electors of President and Vice President of the United States, of Senators and Representatives in the Legislature, and of all public officers, whether State, municipal or local, shall be by the courts of law regularly established, or by one or more of the law judges thereof. The Legislature shall by general law designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto, but no such law assigning jurisdiction or regulating its exercise shall take effect as to any contest arising out of an election held before its passage.

RESIGNATION OF MR. GOWEN.

The PRESIDENT *pro tem.* presented the following communication, which was read:

PHILADELPHIA, May 23, 1873.

MY DEAR SIR:—I hereby resign my position as a member of the Constitutional Convention.

Very respectfully,

FRANKLIN B. GOWEN.

Hon. JOHN H. WALKER, *President pro tem.*, Constitutional Convention.

Mr. HARRY WHITE. I move that the letter be laid on the table for the present; and in doing so we merely follow a precedent which we established in a recent case in connection with a very distinguished gentleman.

The PRESIDENT *pro tem.* It is moved that the communication be laid on the table for the present.

The motion was agreed to.

COUNTY OFFICERS.

Mr. S. A. PURVIANCE. I move that the Convention go into committee of the

whole for the purpose of considering the report (No. 13) of the Committee on County, Township and Borough Officers.

The motion was agreed to, and the Convention resolved itself into the committee of the whole, Mr. J. W. F. White in the chair.

**THE CHAIRMAN.** The committee of the whole have before them the report (No. 13) of the Committee on County, Township and Borough Officers, reported to be article XIV. The first section will be read.

The CLERK read as follows :

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

**MR. KAINE.** Mr. Chairman : This is a new provision, and I should like to hear from the chairman of the committee what necessity there is for it. The Committee on Officers have this subject under consideration, and they find in the old Constitution the third section of the sixth article, which covers this entire ground, and more too :

"Prothonotaries of the Supreme Court shall be appointed by the said court for the term of three years, if they so long behave themselves. Prothonotaries and clerks of the several courts, recorders of deeds and registers of wills, shall, at the times and places of election of Representatives, be elected by the qualified electors of each county, or the district over which the jurisdiction of said courts extends, and shall be commissioned by the Governor. They shall hold their offices for three years, if they so long behave themselves well, and until their successors shall be duly qualified. The Legislature shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices shall be held by one person. Vacancies in any of the said offices shall be filled by appointments, to be made by the Governor, to continue until the next general election, and until successors shall be elected and qualified as aforesaid."

That is the provision of the Constitution of 1837-38. It certainly covers this whole

subject, and I can see no necessity for the introduction of this section.

**MR. S. A. PURVIANCE.** Mr. Chairman : I am aware of the fact that this Convention has occasionally committed apparently the same subject to different committees, but it was to the Committee on County, Township and Borough Officers that was specially referred the existence or non-existence of the officers named. Here I will say, in answer to the gentleman from Fayette, that the committee were unanimous in declaring that there should be no change made in these peculiar offices; that they should exist as the people now understand them. They have been in existence ever since the organization of the government down to the present time, every man in the country being familiar with the name of sheriff, of prothonotary, of register and recorder, treasurer, &c., and therefore we should not make an innovation.

I will mention while I am up that there is an omission in the first section, which I desire to supply, and that is by inserting "county auditors." That was omitted in the print in some way. The words "county auditors" should be inserted after "county surveyors," in the third line.

**THE CHAIRMAN.** That correction will be made if there be no objection.

**MR. S. A. PURVIANCE.** I may as well state now what belongs to the entire report, that the report embraces about three propositions. One is in reference to the character of the officers; another as to the manner of their coming into existence, and the third as to their being salaried or fee officers. These are the three propositions, upon all of which the committee, composed of nine, were unanimous.

**MR. MACCONNELL.** I should like to ask the gentleman a question before he sits down in regard to the report. I find in the old Constitution that the term of office of the sheriff, coroner, prothonotary, clerk of the orphans' court, recorder of deeds, and district attorney is three years. I observe that that provision is left out entirely, and that the Legislature is authorized to fix the term. I should like to ask why the change is made in that respect?

**MR. S. A. PURVIANCE.** It was thought best by the committee to leave that entirely to the Legislature. Whether that meets the approbation of the Convention or not, is for them to determine. That

was the idea of the committee. There are some of these officers who might in the judgment of the Legislature be properly continued for a longer term than others; for instance in reference to the officers of this city or Allegheny county, or to Lancaster or Schuylkill. It was the idea of the committee unanimously to leave that matter to the Legislature.

Mr. BOWMAN. Mr. Chairman: I rise for the purpose of ascertaining whether an amendment is now in order.

The CHAIRMAN. Certainly.

Mr. BOWMAN. Then I move to strike out all after the word "law," in the fourth line, including the word "provided," and I will simply state my reasons. I do not suppose it is contemplated here that it would be right and proper for the treasurer of a county to occupy the office of commissioner at the same time. The duty of one is to levy the taxes, of the other to collect and hold them and make disbursements. I do not suppose that it will be seriously contended that it would be right and proper for the district attorney of any particular county to occupy the official position of clerk of the criminal court at the same time.

Mr. S. A. PURVIANCE. I will state to the gentleman from Erie that this clause was intended to cover the case in small counties of register of wills and recorder of deeds. In some of the smaller counties these two offices are combined; in larger counties they are separated.

Mr. BOWMAN. Very well.

Mr. S. A. PURVIANCE. It is not to be presumed that the Legislature would couple any two offices that were incompatible.

Mr. BOWMAN. Then if my amendment is carried and this proviso is stricken out, what will prevent the Legislature from saying, by act of Assembly, that one man may hold two official positions? Here you go on and give a power to the Legislature, except as to the office of sheriff and coroner, to say that one man may hold all the rest of the offices in a county. Is it a rightful power for the Legislature to do that? I do not believe that any good can be subserved by retaining that provision in this section.

Mr. ANDREW REED. Mr. Chairman: In several of the small counties not only is the register of wills, the clerk of the orphans' court, but also the recorder of deeds. In the county where I live, one person fills these three offices, and one person fills the office of prothonotary,

clerk of the court of quarter sessions and some other position besides. It was supposed that when these offices, which are the offices that now exist by law, are made constitutional offices, it might be argued that it was necessary there should be a separate officer for each one; and to avoid that conclusion the proviso was put in. I cannot see any harm it will do. It will obviate that construction and leave the law as it is now.

Mr. MANN. Mr. Chairman: I simply desire to say that if this section is adopted at all, it does need this proviso. The Legislature have the entire control of these offices as the Constitution now stands; but clearly if this amendment prevails and the four lines preceeding the proviso are inserted in the Constitution, the Legislature will have no authority to authorize one person to hold more than one of these offices. In several of the small counties the prothonotary is now not only prothonotary but he is clerk of court of quarter sessions, the common pleas, and oyer and terminer, holding four offices, and receives from the Governor four commissions; and so of the Register of Wills. Clearly this amendment ought not to prevail. The section ought to remain as it is or be voted down—one way or the other.

Mr. BOWMAN. Allow me to ask the gentleman a question. Under what provision of the present Constitution did the Legislature enact a law authorizing one man to hold two or three different positions?

Mr. MANN. Simply because they were not made constitutional offices.

Mr. BOWMAN. The Legislature has done it, nevertheless.

Mr. MANN. If they are made constitutional officers, the presumption is that only one person can hold one office.

Mr. MACCONNELL. As the section stands on our files, I do not know that it is objectionable; but with the addition that has been put in with reference to county auditors, it seems to me that it is. You are aware, sir, that in Allegheny county we have not now, and have not had for years, any county auditors. We have a county comptroller who performs the duty of auditor, and we get along very well, so far as I know, under that arrangement; but, if we put into the Constitution this provision, we shall have to relieve ourselves of that arrangement and substitute a board of auditors.

Mr. Kaine. Mr. Chairman: The delegate behind me (Mr. Bowman) inquired of the delegate from Potter (Mr. Mann) a few moments ago by what authority the Legislature had already provided by law for one person holding several offices at the same time. That power is given them under the third section of the sixth article of the present Constitution, which declares that "the Legislature shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices shall be held by one person."

I do hope, sir, that the Convention will consider, before they throw the door so wide open as this amendment proposes. There was no subject that engrossed the attention of the Convention of 1837-38 so much as the tenure of office. That Convention was called partly for the express purpose of taking from the Governor the appointment of all the officers named in the third section of the sixth article of the Constitution. Before that time those officers had all been appointed by the Governor. Since that time they have been elected by the people. That Convention provided the tenure for which these officers should hold their offices. It provided that the prothonotary of the Supreme Court should be appointed by that court, and should hold his office for three years. They provided further that "prothonotaries and clerks of the several other courts, recorders of deeds and registers of wills, shall, at the times and places of election of representatives, be elected by the qualified electors of each county, or the districts over which the jurisdiction of said courts extends, and shall be commissioned by the Governor. They shall hold their offices for three years, if they so long behave themselves well, and until their successors shall be duly qualified."

Now this amendment proposes to leave this matter entirely to the Legislature, one of the most dangerous innovations in my opinion that has yet been attempted upon the old Constitution—to throw open a matter of this kind to the Legislature, to let them fix the time a prothonotary shall hold his office, a commissioner shall hold his office, the time a recorder shall hold his office! We have lived under this now for nearly forty years. The people have become accustomed to it; we understand it. I do not think the section requires any alteration whatever and I hope it will be suffered to remain.

Mr. D. W. PATTERSON. I would suggest to the gentleman from Fayette that if we wish to insert a length of term it would come in more properly after the word "offices," in the second section. I should be in favor of inserting that portion of the old Constitution there.

The CHAIRMAN. The question is on the amendment of the delegate from Erie (Mr. Bowman.)

The amendment was rejected.

Mr. BRODHEAD. I offer the following additional proviso:

*"Provided further, That no sheriff or treasurer shall be re-eligible for the term next succeeding the one for which he was elected."*

I hope, sir, that this amendment will be adopted. To allow the re-election of sheriffs and treasurers I think would be a very doubtful and a very dangerous practice. This keeps the law as it now is, which I think is about the best condition it can be put in.

Mr. S. A. PURVIANCE. I suggest to the delegate from Northampton that his amendment would be more appropriate to the sixth section, which relates to eligibility.

Mr. BRODHEAD. Very well, then, I withdraw it for the present.

Mr. FULTON. I move to amend the section by adding to the exceptions in the proviso county treasurers, by inserting the words "county treasurers" after the words "coroner" in the fifth line, which I take it will meet the objection raised by the gentleman from Erie (Mr. Bowman.)

The CHAIRMAN. The question is on the amendment of the delegate from Westmoreland (Mr. Fulton.)

The amendment was agreed to.

Mr. CORSON. I understand that the proviso has not been stricken out.

The CHAIRMAN. It has not been.

Mr. CORSON. Then I move to further add at the end of the section:

*"And provided further, That every coroner shall be learned in medicine and surgery."*

Mr. Chairman, I have been requested by the Medical Society of Pennsylvania to offer this amendment. I understand that the office of coroner is a very important office; that the object of having a coroner's inquest is to ascertain at the very time of the death what has been the cause of the death, and no man can ascertain that fact but a man who is learned in medicine and surgery.

We have provided, and wisely provided, that the judges shall be learned in the law because they are to lay down the law. Now I ask the gentlemen of this Convention to consider whether any man is competent to hold an inquest over a man who falls prostrate upon this floor but one who is skilled in the science of medicine and surgery. Think of the consequences! I am not here to make a speech to these intelligent delegates, but I ask them to consider for one moment the object of the office of coroner and to consider what ought to be his qualifications.

The CHAIRMAN. The question is on the amendment of the delegate from Montgomery (Mr. Corson.)

The amendment was rejected; there being, on a division: Ayes twenty-six: less than a majority of a quorum.

Mr. KAINE. Mr. Chairman: I move to strike out the whole section and substitute therefor the third section of the sixth article of the present Constitution, as follows:

"Prothonotaries and clerks of the several courts other than the Supreme Court, recorders of deeds and registers of wills shall, at the times and places of election of representatives, be elected by the qualified electors of each county, or the districts over which the jurisdiction of said courts extends, and shall be commissioned by the Governor. They shall hold their offices for three years, if they shall so long behave themselves well, and until their successors shall be duly qualified. The Legislature shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices shall be held by one person. Vacancies in any of the said offices shall be filled by appointments, to be made by the Governor, to continue until the next general election, and until successors shall be elected and qualified as aforesaid."

That is the old Constitution, and I think it covers the whole ground, and is all we need.

The CHAIRMAN. The question is on the amendment of the gentleman from Fayette (Mr. Kaine.)

The amendment was rejected; there being on a division, ayes twenty-two; less than a majority of a quorum.

Mr. BRODHEAD. I offer the following to take the place of the proviso after the word "law," in line four—

Mr. CORSON. I move a call of the House. There is not a quorum here. My

amendment was rejected for want of a quorum.

The CHAIRMAN. The Clerk reports to the Chairman that there are sixty-seven members present, which is a quorum. The amendment of the delegate from Northampton (Mr. Brodhead) will be read.

The CLERK. The amendment is to insert in place of the proviso beginning in line four, the following:

"That the Legislature may declare what offices shall be incompatible; and no sheriff or treasurer shall be eligible for the term next succeeding the one for which he was elected."

The amendment was agreed to; there being on a division, ayes thirty-six; noes eighteen.

Mr. CORSON. That makes only fifty-four members voting.

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

Mr. ROSS. I propose to amend the section as follows: "In the third line after the word 'attorneys,' I move to insert the words 'superintendents of public schools.'"

The CHAIRMAN. The question is on the amendment of the gentleman from Bucks.

Mr. ROSS. I am informed by the gentleman behind me that the report of the Committee on Education includes this amendment that I have proposed. If that be the fact, I desire to withdraw it.

The CHAIRMAN. The amendment is withdrawn. The question recurs on the section as amended.

Mr. MACCONNELL. Let it be read.

The CLERK read the section, as follows:

"County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, county commissioners, county treasurers, county surveyors, county auditors, clerks of the courts, district attorneys, and such others as may from time to time be established by law: *Provided*, That the Legislature may declare what offices shall be incompatible, and no sheriff or treasurer shall be eligible for the term next succeeding the one for which he was elected."

The section as amended was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section two, as follows:

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.

Mr. MACCONNELL. I move to amend by striking out the words "such terms as may be prescribed by law," and inserting, "the term of three years, if they shall so long behave themselves well, and until their successors are duly qualified." That is the phraseology of the old Constitution.

The amendment was agreed to, there being on a division, ayes thirty-seven, noes twenty-three.

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

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

"And it shall be the duty of the county treasurer to collect all State, county, and local taxes of every kind assessed within the limits of such county."

Mr. LILLY. I am strongly in favor of such legislation as that, but I do not know that it is necessary to have it in the Constitution. I believe we should have a county treasurer to collect the taxes; but whether the specific requirement that he shall collect all taxes ought to be in the Constitution, I am not so certain.

The CHAIRMAN. The question is on the amendment of the delegate from Lebanon (Mr. Funck.)

The amendment was rejected.

The question recurring on the section as amended, it was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read section three, as follows:

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.

Mr. D. N. WHITE. I offer the following amendment, to come in at the end of the section:

"After the payment of clerk hire and all other expenses of his office."

The section as now arranged would give the officer all the fees of the office without requiring him to pay for his clerks and other office expenses. The amendment I

have offered simply provides that the officer shall pay his clerks' salaries and his office expenses out of his fees.

Mr. HAZZARD. I do not see that the amendment will effect that purpose any better than the section itself. The section provides that the salary of an officer who is paid by fees under our present system shall not exceed the annual amount of fees collected by him. If his fees are paid into the general treasury, of course the expenses of the office when the fees are received will be paid out of that treasury. The clause should be left as reported, striking out the proviso that says his salary shall not be larger than his fees. That would present to the officer a constant incentive to increase his fees as much as possible.

The CHAIRMAN. The question is upon the amendment.

The amendment was rejected, ayes thirteen, less than a majority of a quorum.

Mr. HEMPHILL. I now move to amend by striking out all after the word "law" in the first sentence.

Mr. LILLY. Read the part to be stricken out.

The CLERK read the words proposed to be stricken out, as follows:

"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."

On the question of agreeing to the amendment of Mr. Hemphill, a division was called for, which resulted twenty-eight in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

Mr. HEMPHILL. I ask that the other side be counted.

Mr. CORBETT. I rise to a question of order. The gentleman has no right to call for the negative vote when there is not a majority of a quorum voting in the affirmative.

The CHAIRMAN. The Chair will inform the gentleman from Chester (Mr. Hemphill) that the Clerks report sixty-nine members present in the Hall.

Mr. LEAR. I desire to propose an amendment. I joined in the report of this Committee on County, Township and Borough Officers when it was concluded, although I did it under protest.



But I thought the report would be written out a little differently from the plan which has been here submitted. Now I move to amend by striking out the words "township or borough," in each of the three places where they occur.

I do not think that township and borough offices ought to be compensated by salary. Constables and justices of the peace ought not to be included in the provisions of this section. They should not be classed under this term of "salary," nor do I think that the Committee on County, Township and Borough Officers ever so agreed, unless it was at a meeting when I was not present.

Mr. S. A. PURVIANCE. I trust the amendment offered by the gentleman from Bucks will not prevail. The Committee on County, Township and Borough Officers very well considered the force of the term "salary," and upon examination it was found to apply as well to a *per diem* allowance as to a fixed compensation paid at stated intervals. Therefore they inserted it.

Mr. HAZZARD. May I ask the gentleman a question?

Mr. S. A. PURVIANCE. Certainly.

Mr. HAZZARD. How would you ascertain the salary of a justice of the peace?

Mr. ROSS. Or of a constable?

Mr. S. A. PURVIANCE. That need not be done. As provided for in the section, that would be provided for by law, and the Legislature can provide that a justice of the peace or a constable shall receive a salary of so much, whatever the amount may be. It may be \$300, \$500, or \$600, or any amount which may be fixed by the Legislature.

Mr. CORSON. I understood the amendment proposed by the gentleman from Bucks to be too broad in its application, because as the section now reads his amendment would include supervisors of roads, constables, justices of the peace, assessors and all such officers; and certainly that is not what he meant.

Mr. S. A. PURVIANCE. I simply wish to say, in answer to the gentleman from Montgomery, (Mr. Corson,) that if he looks at the preceding part of the section he will find that it relates only to the receipt of money belonging to the State, or a county, or a township, and surely the rule which applies to that is a proper one.

Mr. MANN. If I understand this section, it provides that every county officer who receives compensation for his ser-

vices shall be paid a salary. That is a constitutional interference with a very numerous class of officers in this Commonwealth who will be very largely affected by it; and for what earthly reason is it necessary that we should make this interference? Surely no evil has grown up out of the compensation of supervisors, constables and justices of the peace, by fees and not by salaries.

Mr. ANDREW REED. Are not supervisors paid a salary now?

Mr. MANN. No, sir.

Mr. ANDREW REED. They get a *per diem* pay, and that is as much a salary as if they were paid an annual sum.

Mr. MANN. A salary means only an amount that is paid by the year.

Mr. ANDREW REED. No, sir.

Mr. MANN. What then? What is the idea of a salary? Certainly an amount that is annually paid. That is the language of this section. It says that "the annual salary of any such officer," &c. There is no other meaning which can be attached to this section except that of annual salaries.

This is an unnecessary interference with a majority of all the officers of this Commonwealth. There has been no call for it, and it will create irritation and uneasiness without any corresponding good to compensate for it.

Mr. ANDREW REED. I wish to state as a member of the Committee on County, Township and Borough Officers, that this very subject came up before us, and was thoroughly discussed; but it was not the intention of the committee to change the pay of supervisors and such officers as are now paid a *per diem*. Supervisors are now paid so much a day for every day that they work. The term "salary" will apply to them or to any other officers who are paid a *per diem* as well as it will to those who receive an annual compensation.

Mr. WHERRY. Will the gentleman from Mifflin permit a question?

Mr. ANDREW REED. Certainly.

Mr. WHERRY. How are the treasurers of school funds paid?

Mr. ANDREW REED. I do not know.

Mr. WHERRY. They are paid a percentage, and so are collectors of taxes.

Mr. ANDREW REED. Well, I see no reason why the treasurer of a school board or a collector of taxes should not be paid a salary as well as any one else, provided that salary does not amount to

more than the aggregate yearly amount of fees collected.

The CHAIRMAN. The question is upon the amendment of the gentleman from Bucks, (Mr. Lear,) to strike out the words "township or borough officers," wherever they occur.

On the question of agreeing to the amendment proposed by Mr. Lear, a division was called for, which resulted forty-three in the affirmative and sixteen in the negative. So the amendment was agreed to.

The CHAIRMAN. The question recurs on 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 4. The salary of no county, township or borough officer shall be increased after his election or during the term for which he was elected.

Mr. LILLY. I move to amend by striking out the words "township or borough," so as to make it correspond with the foregoing section.

Mr. T. H. B. PATTERSON. I thought to render that motion unnecessary by calling the attention of the committee of the whole to the fact that this section is more than covered by the fifteenth section of the article on legislation as already adopted:

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

That covers the whole ground of this section, and the section should therefore be voted down.

The CHAIRMAN. The question is on the amendment of the gentleman from Carbon.

The amendment was agreed to.

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

On the question of agreeing to the section, a division was called for, which resulted twenty-eight in the affirmative. This being less than a majority of a quorum the section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

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

municipal moneys which may be paid to them.

Mr. WORRELL. This simply states a principle. I do not understand that it is of any importance in this report. It merely says that the Legislature shall provide for the strict accountability of certain officers for certain moneys. I do not know that it will have any practical or operative effect, if adopted.

Mr. BEEBE. I move to amend by striking out all after the word "officers" down to and including the word "for" before "all public." I want the section to read:

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

I want the public officers to be accountable for the moneys of the public and not the fees which belong to themselves.

The CHAIRMAN. The question is upon the amendment.

The amendment was rejected.

On the question of agreeing to the section, a division was called for, which resulted forty-six in the affirmative, and eleven in the negative. So the section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

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.

Mr. BRODHEAD. I move to amend by striking out the word "borough." I think that the time will come some of these days, when the Legislature will probably desire to have the power of saying who shall hold office in a borough and distribute the money of that borough, and I want this left open to the Legislature if possible.

The amendment was rejected.

Mr. BUCKALEW. I suppose the effect of this section will be to prevent the Legislature from requiring anything more than ordinary residence, and also to prevent them from requiring for municipal purposes that a person shall be an owner of real estate. We have that in another part of the Constitution. The only effect of this section will be to prevent the Legislature from making special qualifications for office-holding in a municipality with regard to residence and payment of taxes beyond the qualifications of an elector. That is proper.

The CHAIRMAN. The question is upon the section.

On the question of agreeing to the section, a division was called for, which resulted thirty-nine in the affirmative and fifteen in the negative; so the section was agreed to.

The CHAIRMAN. The report has been gone through with.

Mr. BUCKALEW. Mr. Chairman: I have been unanimously instructed by the Committee on Suffrage, Election and Representation to present the following additional section:

"In elections of county commissioners and county auditors, each elector may cast all his votes for a smaller number of persons than the whole number to be chosen, and candidates highest in vote shall be declared elected. Three commissioners and three auditors shall be chosen in each county at the general election in 1875 and every third year thereafter, whose terms shall commence on the first Monday of January next following their election; and the terms of commissioners and auditors hereafter elected prior to 1875 shall expire with that year. Casual vacancies in the offices of county commissioner and county auditor shall be filled by the courts of common pleas of the respective counties in which such vacancies shall occur by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled."

Mr. Chairman, I know the committee is tired, I certainly am myself, of this protracted session, and hardly in a condition to enter upon the consideration of an important question.

This amendment, it will be seen, provides, to state it in short, that the minority in each county, where it exceeds one-third, shall choose one of the commissioners and one of the county auditors, and make provision for the filling of vacancies in accordance with this regulation by the courts of common pleas of the respec-

tive counties. That is its effect and operation.

I beg leave to say that the Committee on Suffrage have been, so far as the committee have been convened, a majority of them unanimously in favor of this provision, without reference to their opinions with regard to the application of what is called minority representation in other cases.

But, Mr. Chairman, I am very reluctant to have this subject urged upon the committee of the whole when it is fatigued and when a quorum of members are absent. I suggest, therefore, that it be not urged to a final disposition if any gentlemen desire to debate it.

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

The motion was agreed to, ayes, forty-two; noes not counted. The committee rose.

The President having resumed the chair, the Chairman (Mr. J. W. F. White,) reported that the committee of the whole had had under consideration the article reported by the Committee on County, Township and Borough Officers, 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 Monday next.

Mr. LILLY. I move that we adjourn.

Mr. T. H. B. PATTERSON. I move that the Convention now resolve itself into committee of the whole on the article for future amendments.

The PRESIDENT *pro tem*. A motion has been made to adjourn.

Mr. LILLY. I insist on the motion to adjourn.

The motion was agreed to; ayes, forty-two; noes, fourteen; and (at two o'clock and thirty minutes P. M.) the Convention adjourned until half-past nine o'clock A. M. on Monday.



## ERRATA.

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Page 606, first column, sixteenth line from bottom, for "her" read "per."

Page 607, second column, twenty-fifth line from top, for "character" read "charter."

Page 626, first column, thirtieth line from top, for "their" read "there."

Page 656, second column, thirtieth line from top, for "H. W. Smith" read "W. H. Smith."

Page 659, second column, fifteenth and seventeenth lines from top, for "*magna charter*" read "*magna charta*."

Page 681, first column, eighteenth line from top, for "Ithmiel" read "Ithuriel."

Page 750, first column, fifteenth line from bottom, for "God" read "food."

Page 754, first column, twenty-eighth line from top, for "absurd" read "absolute."



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